DOCUMENT RESUME

ED 114 317 SO 008 685

AUTHOR	Patterson, David; And Others
TITLE	The American Criminal Justice System: A General Survey of Our Courts, Our Police, and Our Correctional System.
INSTITUTION	West Virginia State Dept. of Education, Charleston.
PUB DATE	75
NOTE	75p.
EDRS PRICE	MF-$0.76 HC-$3.32 Plus Postage
DESCRIPTORS	Civil Liberties; *Court Role; Crime; Curriculum Development; Curriculum Guides; Instructional Materials; *Justice; *Law Enforcement; *Law Instruction; Learning Activities; Police; Resource Guides; Secondary Education; *Social Studies; Teaching Techniques

ABSTRACT

This curriculum resource guide is part of an effort to provide background information for both teachers and students about the composition of the American criminal justice system. The document begins with an historical view from other cultures and other times. Chapter two briefly looks at the American system of justice, including handling criminals and juveniles, the purpose of the courts, and the role of the correctional procedure. The next two chapters present selected issues which the criminal justice system faces as it attempts to combat crime and cooperate with local, state, and national government. These issues are presented for the purpose of highlighting the processes and the procedures the system uses as it works with minorities, women, juveniles, and individual rights. Following that is a chapter on the criminal justice system as viewed by the police, the courts, and the criminal. Within each chapter are organizing questions and learning activities which supplement the readings. Several appendices conclude the document, including a selected bibliography (Author/JR)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

THE AMERICAN CRIMINAL JUSTICE SYSTEM:

A GENERAL SURVEY OF OUR COURTS, OUR POLICE, AND OUR CORRECTIONAL SYSTEM

U.S. DEPARTMENT OF HEALTH
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

LC11717

SE 000 685

West Virginia Department of Education

00002

THE AMERICAN CRIMINAL JUSTICE SYSTEM:

A GENERAL SURVEY OF OUR COURTS, OUR POLICE, AND OUR CORRECTIONAL SYSTEM

Written by

Dr. David Patterson, Marshall University
Mr. Timothy Flanigan, Marshall University
Dr. Milton E. Ploghoft, Ohio Ur iversity, Athens, Ohio

Edited By

Dr. Jack Newhouse

Daniel B. Taylor
State Superintendent of Schools
West Virginia Department of Education

1975

00003

WEST VIRGINIA BOARD OF EDUCATION
EXECUTIVE OFFICES
Charleston, West Virginia 25305

Perce J. Ross, President
Buckhannon, 1977

Fountie N. Williams, Vice President
Clarksburg, 1979

Dr. Carl J. Roncaglione, Secretary
Charleston, 1981

Elmus L. Snoderley, Member
Fairmont, 1973

A. H. Spangler, Member
Bluefield, 1975

Ex Officio Member
Dr. Daniel B. Taylor
Superintendent
West Virginia Department of
Education

Bob E. Myers, Member
Huntington, 1976

James Paul Geary, Member
Petersburg, 1978

Dr. Samuel J. Baskerville, Member
Charleston, 1980

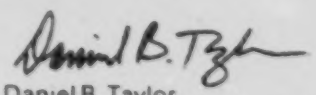
Mrs. Mary Martha Merritt, Member
Beckley, 1983

Ex Officio Member
Dr. Ben L. Morton
Chancellor
West Virginia Board of Regents

FOREWORD

The fundamental principle underlying American democracy is that the citizenry ultimately controls the government. To exercise such control effectively and responsibly, our citizens must have a basic understanding of issues regarding the concept of law, the structure of the legal system and the function of our government at all levels. This document presents to the student an opportunity to examine concepts relating to the purpose and the process of the criminal justice system in America.

In order to make rational decisions regarding the function of law within our society, students must have the experience of applying the principles of justice, equality, freedom, and authority to their lives. To undertake this task is to acknowledge the need to incorporate law-related studies into the existing social studies curriculum. The possibilities for appreciative understanding of such ideals as "liberty" and "order" stem not only from an examination of our local and national legislative bodies, but from an in-depth study of our laws, our courts, our law enforcement agencies, and our correctional systems. Young people who come to understand the system of justice will be capable of dealing with that system and will, therefore, become better able to cope with situations involving their rights and responsibilities.



Daniel B. Taylor
State Superintendent of Schools

PREFACE

What can the body of knowledge which comprises the American Criminal Justice System contribute to student awareness about his basic rights as a citizen? In presenting an overview of the courts, law enforcement, and the correctional system, it is the purpose of this material to convey how the system of justice came to be as it exists today. In addition, each agency within the American System of justice is described with the goal being to illustrate its function, its place with the total system and the stresses and the constraints placed upon that agency by other agents.

The study of this document begins with a historical view from other cultures and other times. The study concludes by presenting selected issues which the criminal justice system faces as it attempts to combat crime and cooperate with local, state and national government. These issues are presented for the purpose of highlighting the processes and the procedures the system uses as it works with people who come in contact with the system of justice.

Problems of crime and means of preventing crime rest with the citizenry. This material was prepared to help you to understand your responsibility toward the criminal justice system.

ACKNOWLEDGEMENTS

In order to bring the very wide scope of the total criminal justice system in America within a manageable perspective for our students, it was necessary to formulate basic guidelines from which the social studies curriculum could integrate aspects of law enforcement, the courts and the correctional procedures within its domain. To accomplish this task an Advisory Committee on criminal justice was formed. The individuals who comprised this working committee were:

Mr. Bruce Bonar, John Marshall High School, Glendale, W.Va.
Mr. Donald Burns, Sistersville High School, Sistersville, W.Va.
Mr. Victor Green, South Charleston High School, South Charleston, W.Va.
Mr. David Jones, Petersburg High School, Petersburg, W.Va.
Mr. Allan Kaplan, Huntington East High School, Huntington, W.Va.
Mr. James Martino, Ravenswood High School, Ravenswood, W.Va.
Mr. Larry Myers, Supervisor, Mineral County Board of Education, Keyser, W.Va.

The Advisory Committee was ably assisted throughout its deliberations by Mr. Norman Gross, Assistant Staff Director, the American Bar Association's Special Committee on Youth Education for citizenship and Mr. Phillip Fishman, Mid-West Regional Director of the Constitutional Rights Foundation. Appreciation is extended to *The Charleston Gazette* for its cooperation in allowing publication of the various articles on crime.

Gratitude is extended to the Governor's Committee on Crime, Delinquency and Correction for their financial contribution to this project. Without such assistance their project could not have been completed.

A special thank you is extended to Ms. Elize Weston, Teacher, South Charleston Junior High, for her creative work in the development of visuals for each chapter. Mr. Matthew Thompson, Graphic Artist, West Virginia Department of Education, provided thoughtful criticisms and expressive illustrations helped to bring reality to this document.

Jack Newhouse,
Project Director

CONTENTS

CHAPTER		PAGE
1	A HISTORICAL LOOK AT THE SYSTEM OF CRIMINAL JUSTICE	1
	Introduction	1
	Control of behavior in primitive times	2
	Monarchial influence	3
	What is law and what does it mean to you?	3
	Why do we need laws which differ?	3
	HISTORICAL DEVELOPMENTS OF LAW ENFORCEMENT	4
	Additional law enforcers	4
	How were laws enforced in early America?	4
	Law enforcement at the state level	5
	HISTORICAL LOOK AT THE SYSTEM OF COURTS	5
	How did early societies determine guilt?	5
	State responsibility toward the judical process	6
	What is meant by trial by jury?	6
	Revolution of the grand jury	6
	Influence of religion on trials	6
	BEGINNINGS OF THE COURT SYSTEM IN AMERICA	7
	What function did the various courts play in the lives of colonists?	7
	THE COURT SYSTEM AFTER THE REVOLUTIONARY WAR	7
	Why was it necessary to have both state courts and federal courts?	7
	How were the federal courts established?	7
	Federal district courts	8
	What is the purpose of state and federal courts?	9
	A HISTORICAL LOOK AT EARLY CORRECTIONAL SYSTEMS	9
	How do the following examples indicate a need for this provision?	9
	What were corrections of criminal acts like in the colonial period?	9
	What caused a change in correctional procedures in America?	10
	What part did our increase in crime play in the changing nature of corrections?	11
	THE FIRST AMERICAN PRISONS - 1820-1830:	11
	How did the Pennsylvania and Auburn Plans effect reforms?	11
	Another penal plan	11
	VIEWPOINT ON AUTHORITY	12
	What is the bond between authority and criminal justice?	12
	Behavior in a natural state	12
	What is the role of the constitution regarding authority?	12
2	A BRIEF LOOK AT THE AMERICAN SYSTEM OF JUSTICE	14
	Introduction	14

CHAPTER PAGE

THE CASE OF "FELIX FELONY" 15

What steps are established for dealing with criminals in the process? 15
The case of Felix Felony 15
Types of crimes 16
Preliminary hearing 16
Bill of information and an indictment 16
The arraignment 16
How are jurors selected? 16
Alternatives for jury decisions 17
How are Sentences determined? 17
What is the purpose of a parole? 17

LAW ENFORCEMENT 18

What kinds of police are there? 18
Federal police 18
How do the state police differ from other police? 19
The system of law enforcement within the city and the county 19

THE COURT SYSTEM 19

What is the purpose of a court? 19
The magistrate's court within the state system 19
The circuit court 19
The Supreme Courts of Appeals 20
Possible outcomes of appeals 20
The district courts in the federal system 20
The Miranda case 20
Why is there a need to sentence individuals differently? 21

THE ROLE OF THE CORRECTIONAL PROCEDURE 21

What are the various ways of dealing with convicted criminals? 21
Probation 21
Should all offenders be on probation? 22
The role of prisons 22
A problem of prisons 22
Parole 22
Some limitations of rehabilitation 23

JUVENILE JUSTICE IN THE SYSTEM 23

How has juvenile justice changed since its beginnings? 23
What can happen to a juvenile offender? 24
A problem of juvenile justice 24
The Gault case 24
The decision 24
Options for juvenile offenders 24
Juvenile institutions 24

THE CRIMINAL JUSTICE SYSTEM AS A SYSTEM 25

How do the parts work together? 25
Problems in the system 25
Conflict within juvenile justice 25

VIEWPOINT ON JUSTICE 26

Is the criminal justice system overly concerned with procedure? 26

CHAPTER PAGE

A brief review 26
A precedent on procedure 26
Escobedo v. Illinois 26

3 CRITICAL ISSUES WHICH FACE THE CRIMINAL JUSTICE SYSTEM 30

Introduction 30
Police discretion 31
Is a policeman's discretion like a judge's judicial role? 31
The problem of full enforcement 31
What are some negative consequences of police discretion? 31

THE PRIMARY FUNCTION OF A POLICE DEPARTMENT 31

Non-police activities 32
A possible resolution 32
Illustrations of specialization attempts 32

PLEA BARGAINING 33

What is the extent of plea bargaining? 33
What is the prosecutor's role and what are some reasons for plea bargaining? 33
The defense attorney's role 33
Does plea bargaining serve the idea of equality before the law? 33
What are some controls on plea bargaining? 34

SENTENCE DISPARITY 34

How can disparity in sentencing be controlled? 34
Attitude of the court 34
Consequences of disparity in sentencing 35
Suggested resolutions to the problem 35

PURPOSE OF PRISONS 35

What is the purpose of prisons? 36
Can prisons rehabilitate criminals? 36
What are some problems in current rehabilitation programs? 37
What can be done to solve this dilemma? 37

VIEWPOINT ON CONFLICT 37

What causes people to demand laws? 37
An example of a needed change 38
When is a problem great enough to demand a law for its remedy? 38
How must support do laws require? 39
What determines a good or a bad law? 39

4 CRITICAL ISSUES REGARDING LAWS, CIVIL LIBERTIES, JUVENILE JUSTICE, MINORITIES AND WOMEN 40

Introduction 40

DECRIMINALIZATION 40

Are there good reasons for not enforcing the law? 40
Are there some good reasons why we should retain laws? 41
How can we decide when a law is no longer needed? 41

CHAPTER PAGE

INDIVIDUAL RIGHTS VS SOCIETY'S RIGHTS 42

Two crime models of crime prevention 42
Some suggested changes 42

JUSTICE FOR JUVENILES 42

Should juveniles receive a different form of justice? 42
A difference in states' laws 43
A problem area 43

THE JUVENILE COURT 43

Juvenile justice 43

MINORITIES IN THE CRIMINAL JUSTICE SYSTEM 44

What is the status of racial and ethnic minorities in the system? 44

WOMEN IN THE CRIMINAL JUSTICE SYSTEM 45

5 THE CRIMINAL JUSTICE SYSTEM AS VIEWED BY THE POLICE, THE COURTS AND THE CRIMINAL 48

Introduction 48

PUBLIC PERCEPTION OF THE POLICE 49

Can the public's view of the police have an affect on how police function? 49
Corruption and full enforcement 49
What is the public's view of the court system? 49
What is the public's view of corrections? 50
Two basic vi 51
Another view ..... 5'
What kind of a view is needed? 51
What are some viewpoints from criminal justice personnel? 51
Does the public really care? 52
Two professional views 52
What are viewpoints of the criminal? 53

VIEWPOINT ON TRUTH 53

What is the bond between evidence and truth? 53
Why is it difficult to determine the truth? 54
What are some of the written rules which provide for obtaining the truth? 54

Appendix A FEDERAL AUTHORITY OVER CRIMINAL PROCEDURE: UNITED STATES CONSTITUTION 55

Appendix B SELECTED BIBLIOGRAPHY 56

Appendix C GLOSSARY OF TERMS 60

Appendix D MAGNA CHARTA 63

CHAPTER 1

A HISTORICAL LOOK AT THE SYSTEM OF CRIMINAL JUSTICE

Introduction

What is **justice**? If you were given the job of establishing a "system" for protecting individuals against criminal acts, what kinds of agencies would you include in your "system"? What problems do you foresee? How could you insure that your "system" would treat everyone fairly? Would you punish offenders or attempt to rehabilitate the offenders for breaking your rules and regulations? Could you write rules which could change as conditions in society change?

The criminal justice process in the United States is called a "system". This chapter reveals some contributions to our present system of justice from other places and times. The parts of the system you will be reading about are:

(a) law enforcement,
(b) the court system, and
(c) the correctional system.

In addition, you have an opportunity to study a brief "viewpoint" on the concept of **authority**. If some power of authority were not present in your "system", how could you control the function of your agency?

This chapter deals with some historical developments of the system of justice and concludes with a short essay on authority.

As you read the following pages, try to answer these questions:

1. What is the system of criminal justice?
2. Why have changes occurred to the system?
3. What parts of the system have remained the same over the years?
4. Do you agree that authority is an important idea in the system?

00012

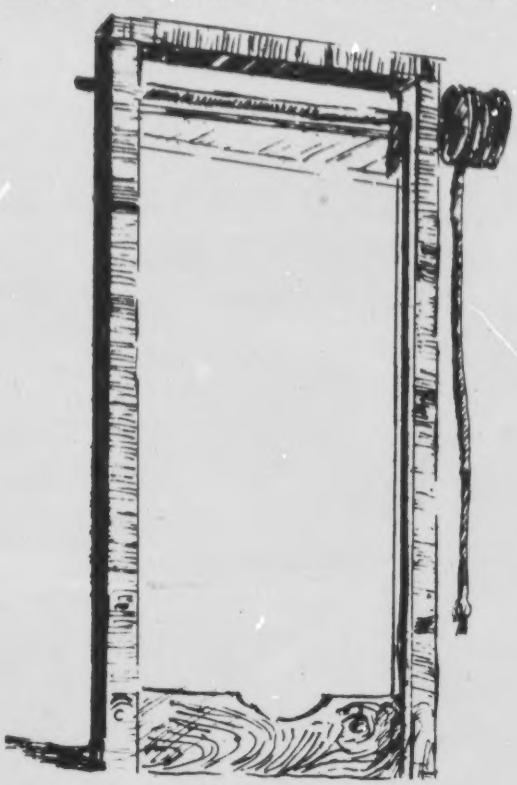
A HISTORICAL LOOK AT THE SYSTEM OF CRIMINAL JUSTICE

A criminal justice system is the method that a society selects to deal with the problems of **deviancy** called **crime** and **delinquency**. Our American system of criminal justice has not always looked as it does today. The process of development began centuries ago and continues to change. No doubt, the criminal justice system of the future will continue to change in order to meet the demands that crime and criminals will continue to place upon the system. In order to understand the operations and problems of our police, courts, and correctional agencies, it is necessary to look back to their earliest beginnings.

Control of behavior in primitive times. During primitive times, behavior was controlled by an informal set of rules and regulations developed within tribal groups. These customs were codes of conduct shared by all tribal members, which, if violated, sometimes brought severe punishment upon the violator. One of the most severe punishments was **exile** from the tribe. The result was the offender lost the protection from enemies and from nature enjoyed by tribal members. As a "loner", he would have to try to live without the help of his tribal family. Another characteristic of this "tribal law" was that an offense committed against any member of the tribe was thought to be an attack upon the entire group.

Because different tribal groups developed codes of conduct, disputes occurred between the groups. If a member of one tribe harmed a member of an opposing group, there were two methods available to settle the conflict. The first method was called **compensation**, where the offender's tribe was required to pay a sum to the victim's tribe. Payment was in the form of goods or services. Second, the two tribes might engage in a **blood-feud** in order to settle the issue. Because the law was a "private" matter between the opposing tribes, and there was no impartial third party to settle disputes, a great deal of uncontrolled force was used to deal with the crime in question.

As man's society grew more complex, he formed states and governments for protection. As a result, men laid down rules to apply to all members of that society. These rules and regulations are known today as **laws**. Men gave up some independence in ruling their families' behavior, but in return they benefited because the rules were an attempt at equality for all. Enforcement of these laws became the duty of the state, rather than the victim's family.



The Guillotine is a machine used for capital punishment, chiefly in France. Fitted into a wooden frame is a knifelike ax made of heavy steel. As the ax is released from a height, it develops momentum and decapitates the victim, whose head rests on a block. The guillotine is named after Dr. Joseph I. Guillotine (1738-1814).

00013

Monarchial influence. As monarchies developed in European countries, criminal law became based upon a region rather than a family group. A crime became an "offense against the king" instead of against the tribe. Therefore, the king became the chief law enforcer for everyone in his region. The king had the power to make laws and punish offenders. It is this term "offenses against the king" that we now apply to our most serious offenses, "**capital offenses**".

Another important characteristic of our criminal law which developed at this time is the concept of individual responsibility. No longer do we hold a criminal's entire family responsible for his actions. The responsibility now rests on the individual offender.

What is Law and What Does it Mean to You?

The subject of what laws are and how they are developed is important to any study of criminal justice. Some definitions of the meaning of law:

1. Law is the rules that hold society together.
2. Law is the rules of the game.
3. Law is the rules we the people make in order to protect our lives, our property and our freedom.

When asked what law meant to them, a group of eighth graders gave these responses:

Student one:
Law is what takes over and punishes when an injustice has occurred. Law is made to protect the victim. Sometimes we think that the law does not take a firm enough hand, but it has its own way of working things out.

Student two:
Law is a code, written or unwritten, to protect a person or property.

Student three:
Law is something that policemen keep controlled. It is written down on paper, but that doesn't mean it is a law that is enforced. Laws are used so that this world won't be a madhouse. Laws control people.

Let us look at this definition part by part in an effort to gain a better understanding of what we mean by "law". First, we see that the law is a set of rules about **external conduct**. By this we mean that the law requires action. In order to be subject to the criminal law, a person must **do** something. Next, we see that the law is enforced by **external force**. This statement means that the state enforces the law. For example, a family tradition is not enforced by official agents of the state, and is, therefore, not a law. Third, our definition of law requires that these rules and regulations be laid down by the state. This part means that the only people we allow to make our laws are our elected legislators. There are other rules of conduct that we live by, such as parental orders, but these are not "laws". Finally, our laws are addressed to "every citizen". This means we strive for equality under the law. Equality is quite different from early European laws which were applied differently to the rich lords and poor serfs.

Why Do We Need Laws Which Differ?

Our system of law serves a variety of purposes. Some laws are designed simply to make life run more smoothly. Laws about traffic are of this nature. Just imagine the confusion which would result if we did not have a simple law directing us all to drive on the righthand side of the road! Other laws have various purposes, too. Aside from laws designed to protect humans and animals from harm, we have laws to protect property, to protect social institutions, (such as marriage), and laws designed to collect revenues (tax laws).

The American System of criminal justice is our method of dealing with those individuals who **violate** the law. Serving this function are three major agencies: police, courts and corrections. What follows is an attempt to present the historical development of these agencies.

00014

HISTROICAL DEVELOPMENTS OF LAW ENFORCEMENT

English contributions to law enforcement. The task of any police department is to protect lives and property, and to enforce the written laws. America has had organized police departments for over one hundred years, but the roots of our law enforcement systems extend back into early English history. Let us look at the evolution of ideas of law and its enforcement.

In England during the ninth century, a king initiated the famous English "**tithing**" system. A "tithe" was a group of ten families organized for self-protection. The head of each household was responsible for his family's conduct and everyone else's behavior in the tithe. This system was an early form of community crime prevention. Ten tithings were organized into a "hundred". "Hundreds" were grouped together into a "**shire**". The king appointed a chief officer as his representative in each shire. This person was called a "**shire-reeve**" (sheriff). When necessary, the "shire-reeve" had the **authority** to call the local men into action in order to combat crime.

Later in English history, another king made the "shire-reeve" a military position which was passed on from father to son over the years. The king created the new position of "**Comes Stabuli**" (constable) to assist the "shire-reeve". The "shire-reeve" and the "comes stabuli" were **judicial** officers as well as police officers. Later, the office of "**Vicemones**" (traveling judge) was created. At this time the judicial authority of the "shire-reeve" and "comes stabuli" was given to the Vicemones. So, for the first time, the "shire-reeve" and "comes stabuli" became strictly law enforcement officers and the job of determining guilt or innocence was turned over to an impartial third party.

The primary duty of these early police officers was the enforcement of tax laws and the settlement of land disputes. Another English king made criminal law enforcement a public matter. He defined certain crimes, such as "offenses against the king's peace", **arson**, robbery, murder, false coinage (**forgery**), and crimes of violence as "felonious" or grave. Today these serious crimes are called **felonies**.

Additional law enforcers. By the sixteenth century, three separate types of police agencies were operating in English towns. **Merchant police**, like store detectives today, were hired by bankers and shopkeepers to guard their businesses. **Parochial police**, another "private" police force, were hired by religious groups to protect members of certain parishes. Finally, **government military police** were responsible for the enforcement of the King's laws.

By 1792, the population of the London metropolitan area had grown to over one million people. The need for a more organized police system was apparent. The city was divided into police districts and the police force was increased to over 3,400 men. By 1835, a central headquarters for the Metropolitan Police was built at Scotland Yard. The police force was organized along military lines, with different ranks of authority, and a specialized detective unit was formed to conduct criminal investigations.

How Were Laws Enforced In Early America?

In colonial America, communities were small and closely-knit. These "self-policing" communities enforced the law informally, with each citizen keeping a watchful eye out for crime. But two hundred years later, the City of New York, realizing that an organized system of law enforcement was needed

00015

in such a populous area, sent representatives to Scotland Yard to inspect and learn from the London Metropolitan Police Force. Later, the New York City Police Department was formed, using Scotland Yard as its model. New York's Police Department is the oldest organized, paid, professional city police department in the United States. Boston, Massachusetts, followed New York's lead in 1850, and this practice has developed to the point where today we have over 10,000 municipal police departments in America.

Law enforcement at the state level. In addition to municipal police, each state also has a law enforcement force. This is necessary primarily because of problems of **jurisdiction**. By jurisdiction we mean that a local police officer loses his authority as a law enforcement officer when he crosses the city or county line where he is employed. As a result of jurisdiction, a police force with the authority to enforce laws in any part of the state was necessary. The first organized state police force was the Texas Rangers, established in 1835. There are also a number of federal law enforcement agencies. The most well-known of these agencies, the F.B.I., has jurisdiction anywhere in the U.S. in cases involving **federal law violations**. The first federal law enforcement agency was the U.S. Postal Inspection Service, established in 1775 by Postmaster General, Benjamin Franklin.

HISTORICAL LOOK AT THE SYSTEM OF COURTS

How did early Societies Determine Guilt?

The purpose of our criminal courts is, first, to determine whether or not an accused person has committed a crime, and second, to determine the punishment and correction. A **trial** is the hearing at which guilt or innocence is determined. Today, the trial is a form of "battle" between two attorneys, with the judge and/or jury acting as a **referee**.

In primitive societies there was no orderly method of determining whether an accused person was guilty. Someone had to observe the offender commit the crime. Only then would the tribe investigate and punish the criminal. If the offense had been committed against a member of another tribe, a **bloody feud** might result as a method of settling the matter.*

Later, the "principle of the **ordeal**" became the most popular form of trial. The basic notion of the "ordeal" was that the gods would rescue and assist the person if he were innocent. Therefore, the accused offender would be required to perform some painful task, such as carrying a hot iron, walking over hot coals, or having his arm boiled in water. If his wounds healed rapidly, he was considered innocent and set free. If they did not, (as was usually the case) he was declared guilty and punished.

As man became more civilized, less brutal methods of determining guilt or innocence were developed. One of these later developments was known as **compurgation**. In this practice, an accused criminal was required to gather a group of friends, known as compurgators, who were willing to take an oath in his behalf. On the day of the compurgation, the accused would testify to his innocence before all of the members of the community. The compurgators (usually twelve) would then swear they they believed his word. If the townspeople believed the person and his compurgators, he was released. If they were not convinced, he was severely punished. Naturally, the more influential the person's compurgators were, the greater the likelihood that he would go free.

Metal frames, like this one
were placed over the heads of gossips
to silence them.

*Can you think of any similar "feuds" which have occurred in West Virginia?

00016

State responsibility toward the judical process. As population increased, states and governments were formed for mutual protection and social control. The responsibility of determining guilt or innocence became the duty of the state. Courts of law developed to fill this need. For many years, governments continued to use physical punishment to get at the truth of a matter. Various forms of torture were used to convince an accused criminal that he should confess to his crime. Once a confession was made, the offender would be brought into court, found guilty, and his punishment would be set by the judge and/or jury. The era of torture represents a long, barbaric segment in the history of criminal justice. The "torture method" was used most actively in the 13th, 14th, and 15th centuries. Although unusual means were discontinued, early police departments were also often accused of employing milder forms of torture to gain confessions. These practices include questioning a prisoner under hot lights for long periods of time without sleep. Over the years, however, these methods have also been discontinued.

What is Meant by Trial by Jury?

Jury trials are a recent development in the long history of criminal justice. Crude juries existed in limited form hundreds of years ago. In early European history, a dispute may have developed between two royal lords, perhaps over ownership of land. The king would order an investigation into this matter, known as an "inquisito". The members of the "inquisito" were able to settle the argument through discussion and compromise. Later, if a king were concerned about the general "public order" in a certain province of the kingdom, he would command that a group of citizens look into the matter and report back to him. These groups were known as **juratas**, from which we derive the term **jury**. The report given to the king, known as the **veredictum**, the the source of our term **verdict**, which is the decision made by the jury which is reported to the court.

Evolution of the grand jury. Later the powers of the jurata were increased. The **assize**, as the jurata became known, was a group of country gentlemen who were called before the king's representatives to tell of any criminal activity in their area. If twelve or more of the king's men agreed that the report were true, the king would order royal action into the matter. This was a **jury** of **accusation**, and was an early forerunner of our **grand juries**. Today, our grand juries, which usually consist of twenty-three citizens, hear information presented by the local prosecutor. At least twelve members must agree in order to hold the accused person over for trial.

Influence of religion on trials. Church groups spoke out against torture and called for jury trials to replace barbaric methods of determining guilt. During the next 100 years, the accused person could choose trial by jury or by torture! Torture did not completely die out as a method of getting at the truth of a criminal matter until the mid-eighteenth century.

Why has the number twelve played such an important role in the development of our judicial system? The answer to this question lies in the influence that religion has had on the development of criminal justice. Since the number twelve occupies an important place in the Bible, men felt that twelve decision-makers would have the approval of the Holy Spirit. Becuase of the twelve apostles of Jesus, and the twelve tribes of Israel, it was concluded that the Holy Spirit would hold a jury of twelve in special favor. This traditional number remains with us today.

Can you think of other significant items with the number 12?

Calendar

JANUARY

S	M	T	W	T	F	S
		1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

FEBRUARY

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

MARCH

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

APRIL

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

MAY

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

JUNE

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

JULY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

AUGUST

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

SEPTEMBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

OCTOBER

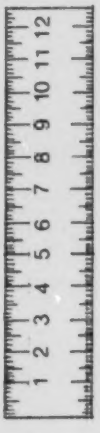
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

NOVEMBER

S	M	T	W	T	F	S
					1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

DECEMBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29



00017

BEGINNINGS OF THE COURT SYSTEM IN AMERICA

What Function did the Various Courts Play in the Lives of Colonists?

When the Massachusetts Bay Company landed at Plymouth Rock, in 1620, there was not a single lawyer in the group. In fact, during the period from 1628-1640, there were only two members of the colony who had even studied the law. The early settlers relied on the Bible and the laws of England to settle disputes.

In the Plymouth Colony, any controversy which arose was to be settled by all of the members of the "company". The original charter of the company gave power to the **General Court**, which was made up of all of the freemen in the area. Realizing how difficult it was to gather all of the townspeople together each time a judicial decision had to be made, a **Court of Assistants** was established. This court was made up of the governor of the colony and two of his eighteen assistants. In order to make courts available to all members of the colony, the remaining Governor's Assistants were given the authority to set up **County Courts** in the area where they lived. These men were originally called **magistrates**, a title which was later changed to Justices of the Peace.

In some cases, if a person was not satisfied that his case was decided fairly by the county court, he could **appeal** his case to the Court of Assistants. When this occurred, the Court of Assistants did not decide what was right or wrong, but only whether the decision was made fairly. The settler could appeal his case to the highest court, the General Court.

The legal **authority** of these early American courts varied. The County Courts could order that highways be built, or had authority to punish local merchants for charging excessive prices for their products.

In addition to these permanent courts, the colonists sometimes called special courts into session to deal with various matters. A special court was organized in 1692 to hear witchcraft cases. Many times a court would be called into session quickly to hear a case involving a stranger, so that he could be quickly on his way.

THE COURT SYSTEM AFTER THE REVOLUTIONARY WAR

Why was it Necessary to have Both State Courts and Federal Courts?

Immediately after the Declaration of Independence was signed in Philadelphia in 1776, many colonies wrote and adopted constitutions declaring themselves independent states. In these constitutions, men established rules for governing their people. Although they used various names, all of these state constitutions followed a basic outline to organize their system of state courts. Each state had:

1. A **supreme court**, with the **authority** to review discussions of lower courts;

2. A system of **local courts**, that would hear a variety of cases, including criminal cases. These courts were most often referred to as **Courts of Common Pleas;** and

3. **Local magistrates**, to hear **petty** cases, both criminal and civil.

As local government became more established, many of the powers of local courts to order roads built, and other financial business, became the responsibility of elected **County Commissioners** and **mayors**.

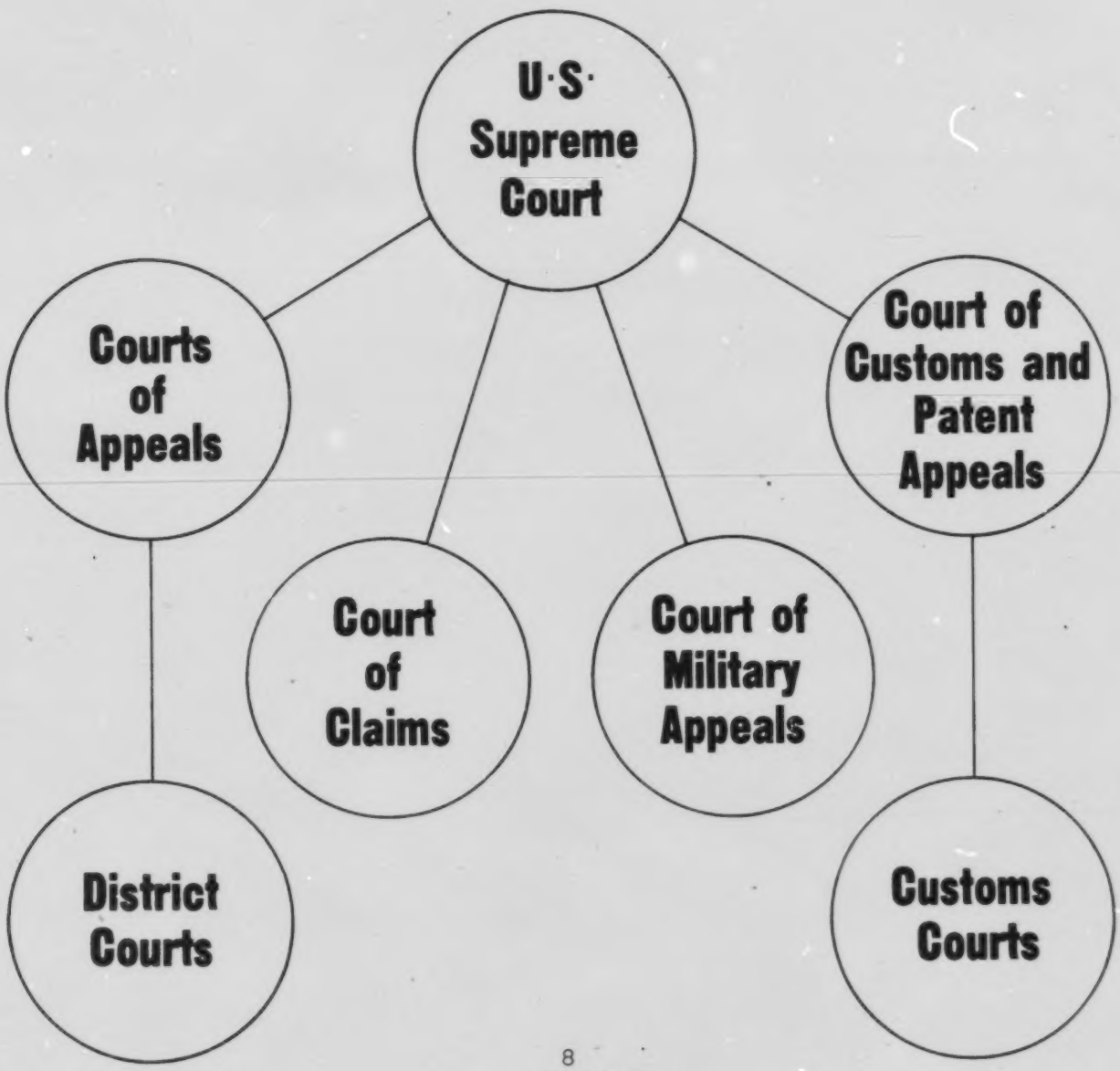
How were the Federal Courts Established?

While the United States Constitution set up rules for the executive and legislative branches of our federal government, that document did **not** specify the structure and function of a federal court system. Article III of the Constitution states that "the judical power of the United States shall be vested in one supreme court, and in such inferior Courts as the **Congress** may, from time to time, ordain and establish". So, while the Presidency and Congress were created wholly by the Constitution, the federal court system was created by Congress.

00018

In its first session, the Congress set out a plan for the federal judiciary. The federal court system was established by the **Judiciary Act of 1789**. In this Act, the Congress provided for a single Supreme Court, consisting of a Chief Justice and five associates, who were to meet in February and August of each year at the capital. The size of the Supreme Court has been increased over the years, and today there are eight associate justices in addition to the Chief Justice. Appointments to the Supreme Court are made by the President. Appointments must be approved by the Senate.

Federal district courts. Next, the Congress divided the states into thirteen districts. (North Carolina and Rhode Island had not yet ratified the Constitution, so they were omitted, but Massachusetts and Virginia were split into two districts each). A **Federal District Court** was created in each district. Finally, the Congress divided the 13 districts into 3 circuits (Eastern, Middle and Southern). The Federal Circuit Courts, which were held twice a year, were held by two Supreme Court Justices and a District Judge. The Circuit Courts were to hear appeals from decisions made in the District Courts. Today, these Circuit Courts are called **United States Courts of Appeals**, and have grown in number to eleven. Supreme Court Justices no longer sit on the Courts of Appeals. Now, the Courts of Appeals and District Courts have their own Federal Judges. There are ninety-four Federal District Courts in the United States.



What is the Purpose of State and Federal Courts?

Why does the United States need both state courts and Federal Courts? This is necessary for a number of reasons. If two states are involved in some type of dispute, who would settle such an issue? The Federal Court System has the responsibility in this type of case. Also, there are certain federal crimes. For example, income tax evasion is a federal crime and must be tried by the federal judiciary. Here is another example: If a person steals an automobile in West Virginia, he has violated a West Virginia law. However, if that person drives the stolen car across a state line, into Kentucky, then he has also committed the federal offense of "interstate transportation of a stolen vehicle". Another example is bank robbery. Because most U.S. Banks are insured by an agency of the federal government (FDIC), bank robbery is a federal offense, and will be dealt with by federal law enforcement officers (F.B.I.) and the federal courts.

A federal court may be asked to review a decision of a state court. A person might feel that the judge of the state court denied him one of his **constitutional rights**, such as the right to an attorney, and request a federal court to review his state trial to see if it were fair. If this were done, the federal court might reverse the state court's decision, or send the case back to the state court to be retried.

A HISTORICAL LOOK AT EARLY CORRECTIONAL SYSTEMS

Article VIII "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

How do the Following Examples Indicate a Need for this Provision?

We dealt with lawbreakers throughout history because of our ideas on the **causes** of criminality. At one point in history the accepted method of dealing with criminals was through the ancient practice of **exorcism**. Exorcism was done because crime was thought to be the result of possession by the devil.

In other periods of history, man has been seen as a "free moral agent", with the ability to choose between right and wrong. Those who engaged in crime were thought to have chosen the devil. Punishment for crime was a form of "social revenge". The individual who chose to harm society had to be "paid back" for his crime. Punishment was to serve many purposes. First, the possibility of severe punishment was designed to prevent all members of society from becoming criminals. By punishing one offender, an example was established. Secondly, punishment was intended to intimidate the individual offender. He was expected to "learn his lesson" and refrain from committing further crimes.

Stockade

What were Corrections of Criminal Acts Like in the Colonial Period?

In colonial times, crime was not seen as a major social problem. The feeling was that there was always a certain number of criminals, and there always would be criminal acts. In their thinking, crime was linked with sin. Crime was seen as the work of the devil. Severe punishments were required to

drive out the devil and convince the person that his conduct would not be tolerated. Most of the methods of punishment were borrowed from earlier English practices.

One of the most common forms of punishment was **flogging**. This form involved whipping the criminal with leather straps, sticks or whips. Flogging also became popular as a means of keeping order and discipline in schools and in families. Its importance is reflected in the age-old quote: "spare the rod and spoil the child". The colonists also used a form of punishment known as **mutilation**. For example, a liar's tongue was cut out, a thief's hand removed. This ancient practice, which was originally used by the early Egyptians, stems from the concept of "an eye for an eye". Another purpose of the punishment was to set an example to citizens as to what might happen if they committed the same crime. Today, this purpose of punishment is called **deterrence**.

The colonists **branded** lawbreakers as well. This form of punishment was used in the Roman Empire, in England and France. The usual practice was to brand the forehead of the cirminal with a symbol representing his crime. For example, a vagrant was branded with a "v", a thief with a "t", and so on. Citizens were thus forewarned to protect themselves against these offenders. The colonial Americans used the world famous **stocks**. This practice was much more of a psychological punishment than physical, because the offender had to suffer the humiliation and disgrace of having his friends and neighbors see him chained in the town square. Many times the townspeople added to the disgrace by throwing rotten vegetables and fruit at the criminal target. The stocks were used in connection with other punishments. The criminal might be held in the stocks for a time, then whipped, branded, and released. The colonists also used the ultimate punishment: the death penalty.

Tar and Feathering

What caused a Change in Correctional Procedures in America?

After the American Revolution, our thinking on the causes of crime changed. Rather than blaming the devil, crime was seen as the result of the laws inherited from England. Also, this movement was fostered by the feeling that everything that was British should be removed from the newly independent nation. Because the British-based law called for severe punishment for even minor crimes, it was felt that a criminal would commit further crimes to avoid punishment for a petty offense. At this time, a philosopher named Cesare Beccaria published, in Europe, an essay entitled **On Crimes and Punishments**, in which he argued that crime could be controlled by more moderate laws. The most important aspect of punishment, said Beccaria, was not its severity, but rather that it be "swift and certain". All of this, coupled with the American notion that civilized society should have civilized laws, led the new states to modify their criminal codes. By 1820, most states had rewritten their laws, lessening the severity of punishments, and reserving capital punishment for only a few serious crimes.

What Part did Our Increase in Crime play in the Changing Nature of Corrections?

The results of law reform, however, were not encouraging. Crime had increased by early 1820 and Americans during Jackson's time began to search for new methods of dealing with crime. They looked around themselves, and everywhere they looked, they saw the traditional ways of life being replaced by large cities, emerging industrialization, and lack of discipline and order. It appeared that the family, the church and the community were losing influence in this new society. According to Jacksonian Americans, there were too many temptations and vices in the cities, and too little discipline and order. The origin of crime was not the devil, or the laws, but the social conditions in large cities.

Jacksonian Americans, having found what they thought to be the cause of crime, proceeded to develop a cure. The remedy was quite simple: Take the criminal out of the society and place him in a temptation-free, corruption-free environment. If we place him in a quiet, orderly, disciplined environment it will cure him of criminal behavior. These places which were built were called penitentiaries. Today they are called prisons, or correctional facilities. The purpose of these early penitentiaries was two-fold: First, they would rehabilitate the criminal, and prepare him for release into the community. Second, they would protect the community from the criminal while he was being reformed.

THE FIRST AMERICAN PRISONS - 1820-1830:

How did the Pennsylvania and Auburn Plans Effect Prison Reforms?

During this period, a great debate arose over the best **method** of reforming criminals. Two schools of thought developed among the reformers, and they built prisons which reflected their ideas. In Philadelphia, a group of Quakers felt that total isolation of the criminal was the most effective means of reform. The Walnut Street Jail in Philadelphia was converted into the state's first prison. Later two large penitentiaries were built according to the "Pennsylvania Plan". The inmates were kept in solitary cells with only a Bible to read. The inmates never saw or spoke with their fellow prisoners, because it was felt that they would "corrupt" each other. The "Pennsylvania Plan" advocates felt that while in total isolation, the inmate would meditate on his criminal life and decide to reform himself. When a prisoner's behavior improved, he was given small work tasks to be performed in his cell. Usually, the Pennsylvania inmates made small trinkets, leather goods, or repaired furniture. During his entire stay in prison, the inmates' only human contact was with the guard who brought his meals, and an occasional visit from the chaplain. Only rarely were the inmate's families allowed to visit, or send letters.

Another penal plan. In New York, penal reformers had quite different ideas about reforming criminals. Under the "Auburn Plan", (New York), the inmates worked together in large workshops during the day, but returned to individual cells at night. The "Auburn Plan" is also called the "congregate system", because the inmates worked in large groups. In order to maintain control at all times, the prison officials required that strict silence be kept at all times. No inmate was ever allowed even to whisper to another worker, because it was felt they might corrupt each other. Also, the Auburn Plan devised a crude form of **classification**. When the prisoner first entered the institution, he was kept in total isolation for a while. Gradually, he was allowed to work for short periods each day, until he finally worked the same schedule as all other inmates. The inmates ate together in a large dining hall, but silence was maintained there as well. If an inmate had more food then he wanted, he raised his lft hand; if he had less than he desired, he raised his right hand. Finally, becuase the Auburn Plan involved moving large groups of prisoners from their cells to work and meals, a special style of marching known as the "lockstep" was devised. Each inmate placed his right hand on the shoulder of the man in front of him, bent over slightly, and turned his head to the left. This way, a single guard would watch a long line of inmates pass by and make sure that no talking was taking place.

00022

Later, in about 1865, America's penal institutions borrowed some important ideas from the prison system of Ireland. First, the Irish System allowed an inmate to earn a reduction of his sentence provided that his behavior was acceptable. This idea, today known as "good time", remains an important element in prison treatment programs, because it allows the inmate to speed up his release, thus helping himself. Combined with "good time", the Irish had developed a system of releasing the inmates under supervision in the community for a short time, rather than simply opening the prison gates and giving him total freedom. Today, the majority of inmates released from prisons spend a period of time on **parole**. Finally, the Irish had developed a system of classification whereby the inmate entering at the lowest level enjoyed the least amount of freedom, received the worst jobs and living quarters. As the inmate progressed in his reform, he was allowed more freedom, a better cell, and a nicer job. These developments were initiated in the United States at the Elmira Reformatory in New York, rapidly spread to all American prisons, and are still with us today.

VIEWPOINT ON AUTHORITY

What is the Bond Between Authority and Criminal Justice?

In an attempt to gain an understanding of our system of criminal justice, it seems that one must examine the authority which that system represents. When you speak of crimes, you are recognizing the existence of authority to forbid the commission of an act and to provide punishment to persons who commit the forbidden act. Indeed, without authority could there be such a thing as crime?

Authority for our system of criminal justice exists in the three branches of our national, state, and local governments: the legislative, the executive, and the judical. Each branch has a distinct function in criminal law and must exercise its authority if we are to have a system of criminal justice. These words may seem a bit dry so, for the sake of illustrating the importance of authority in relation to criminal justice, try to imagine the absence of authority to make and enforce laws. Imagine that no one has the authority to restrict our actions whatsoever; that we are subject to no laws and there are no police to apprehend us if we violate a law, nor are there any courts to decide if we have broken a law. Could a system of criminal justice exist in such a state of affairs? If so, it would certainly be different from the system we have today. For how could a person commit a crime if he is subject to no laws?

Behavior in a natural state. Perhaps under such circumstances a person would be subject to a different kind of law. After all, one must do certain things to survive. One must eat and drink and sleep and protect oneself from the elements. Also, one must protect oneself from harm by other creatures of nature. Even in the absence of any man-made law, then, maybe man would be subject to laws which, for lack of a better name, we might label natural laws. The penalty, of course, for violation of a natural law is to jeopardize life and limb. If this were all we had to worry about,we would, it seems, be literally free as a bird. In fact, our lives would be very similar to that of a bird. We could go merrily about performing the tasks of life until some other creature, man or beast, came along and wanted our food or home or anything else we considered ours. We would be left with little recourse but to fight or flee; if we are subject to no law but nature's neither is anyone else. In such a state of nature could there be criminal justice? It seems there could not, but rather relations among human beings would exist in terms of might as opposed to right. How might these circumstances affect such things as life, liberty and the pursuit of happiness?

What is the Role of the Constitution Regarding Authority? The framers of the Constitution of the United States evidently were convinced that law held great importance for life, liberty, and the pursuit of happiness; that the quality of life is influenced by laws. As representatives of the colonial people these men described in the Constitution the kind of federal government they wanted. This was a government of three separate branches, the legislative, executive, and judicial, each ultimately answerable to the governed. To each branch they granted **authority** to perform functions for written rules. The legislature, comprised of elected representatives, was authorized to write laws. To the executive they granted authority to see that the laws are obeyed. The judicial branch was authorized to decide when the law had been violated, to interpret the law, and to decide what the law is.

However, the framers of the Constitution were wary lest the government use this authority unwisely. They recognized certain activities that they did not want the government to restrict. You can find these activities in the first ten amendments to the Constitution. They are known as the Bill of Rights. By enumerating these restrictions, the framers of the Constitution specifically with-

held authority from the federal government to abridge these activites. So in this one document we see the granting and withholding of authority to restrict our activities. This, it seems, is the basis of our system of criminal justice.

The following is the first paragraph or Preamble to the Constitution of the United States:

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

Removed to conform with copyright laws.

"Long Arm of the Law"

Published in the *Philadelphia Inquirer*
Reproduced by permission from Ginn and Co. From *In Search of America: The Early Years* by Martin W. Sandler Ginn and Co. 1975

CHAPTER 2

A BRIEF LOOK AT THE AMERICAN SYSTEM OF JUSTICE

Introduction

What is a **system**? Now that you have given some thought to administering justice, let us think about how broad the power and the authority of your system will be. Obviously, one agency cannot handle all facets of criminal justice. How can we divide the work? How can each part work independently and still work in a manner which insures that other parts will work effectively? Remember, we asked if you could write rules and regulations which could change as conditions in society changed? Well, could you design agencies for carrying out the laws, the safeguards, and the correctional procedures that could change also?

This chapter describes the manner in which each agency is supposed to operate within the total system. Sometimes an agency encounters problems when working with another agency. Disagreement or "conflicts" are sometimes evident in the operational procedure of the criminal justice system. At the conclusion of this chapter you will have an opportunity to read about the idea of "JUSTICE" AND ITS IMPACT ON THE SYSTEM.

This chapter describes the function of each agency within the system. What follows are some limitations or problem areas of law enforcement, the courts, and the correctional system.

As you read the following questions, try to answer these questions:

1. What are some causes for the continual increase in crimes?
2. Are changes in the criminal justice system helping or hindering the sub systems such as the police, the courts, or the correctional procedures?
3. What can the average citizen do to assist the procedure of Criminal Justice in America?
4. What role does conflict play within and from without criminal justice system?

A BRIEF LOOK AT THE AMERICAN SYSTEM OF JUSTICE

THE CASE OF "FELIX FELONY"

What Steps are Established for Dealing with Criminals in the Process?

The Criminal Justice System is part of our government which deals with all aspects of crime. The system is made up of three basic components: the police, courts, and corrections. Within each of these three parts are sub-divisions which are responsible for specific duties. Although the parts of the Criminal Justice System are administratively inter-related, the system does not always run smoothly.

Most people who come into contact with the Criminal Justice System do so because they have committed (or are accused of having committed) a crime. In 1973 alone, almost nine million serious crimes were reported to the police, resulting in almost two million arrests.

The case of Felix Felony. To describe how the Criminal Justice System might operate, let us look at the case of "Felix Felony", who committed a **burglary**. The first agency of the Criminal Justice System, the police, became involved when his crime was reported to them. After a lengthy investigation, Felix was picked up, questioned, and arrested on a charge of burglary. Had Felix been a juvenile, he would probably have been turned over to the custody of the juvenile court.* However, since Felix was an adult, he was booked and placed in the city jail. The term **"booking"** means that the police have made a record of his arrest and that a record of his fingerprints has been made.

*See page 42 Juvenile Justice

00026

Types of crimes. There are two categories of crimes: felonies and misdemeanors. A **felony** is a serious crime punishable by a minimum of one year in prison. A **misdemeanor** is a less serious crime that is usually punishable by a maximum of one year. Depending on the nature of the crime, an individual may post **bail**. This procedure will allow him to remain free until his trial. The bail bond is an amount of money deposited with the court to guarantee that the **defendant** will show up for his trial. The more serious the offense the higher the bail. Murder is generally considered to be a "non-bailable" offense. Those individuals who cannot afford bail remain in jail until their trial. Sometimes it is necessary for the defendant to appear before a judge or **magistrate** in order to determine the amount of bail. This appearance is called the "initial appearance." At this initial appearance the judge or magistrate also advised the defendant of his **constitutional rights**, and appoints an **attorney** to represent him if he cannot afford one. This appearance, generally, must occur within 24-48 hours of the arrest. In Felix's case, bail was set at $10,000. Felix did not have that amount, but he discovered that he could pay a "bail bondsman" $1,000. The bail bondsman would then arrange for the bail. The original bail of $10,000 is returned to the defendant after the trial regardless of **verdict**. However, the $1,000 paid to the bail bondsman is not returned. If the defendant "jumps bail" the $10,000 may be forfeited to the state. Many cities are establishing **"Release on Recognizance"** programs. This release on recognizance means that people who can be trusted can get out of jail without requiring bail.

Preliminary hearing. After the initial appearance, the next step in the Criminal Justice process is the preliminary hearing. At the preliminary hearing, the prosecuting attorney must present enough evidence to convince the judge that the defendant is guilty. If the judge is not convinced, he may either dismiss the case, or he may reduce the charges against the defendant. (In Felix's situation, the charge might be reduced from burglary to breaking and entering). If the judge does not free the defendant he will direct the defendant to be prepared to "answer the charges against him."

Bill of information and an indictment. After the **preliminary hearing** the prosecutor can proceed with Felix's case in two different ways. The first way is to file a **"bill of information"** with the clerk of the Superior Court where the trial will take place. In West Virginia, for serious offenses like Felix's the prosecutor may choose to seek an **"indictment"** from the grand jury. This alternative means that the prosecutor shows his evidence against Felix to the grand jury in the hopes that they will return a **"true bill"** against the defendant. One advantage to the grand jury process is that the prosecutor is able to call witnesses to testify under oath. By this procedure he may be able to require additional evidence to use in his trial, at a later time. West Virginia relies heavily on the grand jury process. Other states use it rarely. The grand jury process is more expensive than to file a bill of information with the clerk of the Superior Court.

The arraignment. The next step for Felix will be his appearance at the **"arraignment"**. At the arraignment several things happen: (1) Felix will be informed exactly of the offense with which he is being charged; (2) his constitutional rights will be read to him again; (3) the trial date will be set; (4) and Felix's attorney might ask for a **motion of discovery**. This means that the prosecution informs the defense of the evidence they have against the defendant. He might ask for a change in the place of the trial, or a change in the judge, or for a trial by judge rather than by a jury. At this point, Felix can enter a plea of not guilty or he may plead guilty. If Felix chooses not to enter a plea, the judge automatically enters a plea of not guilty.*

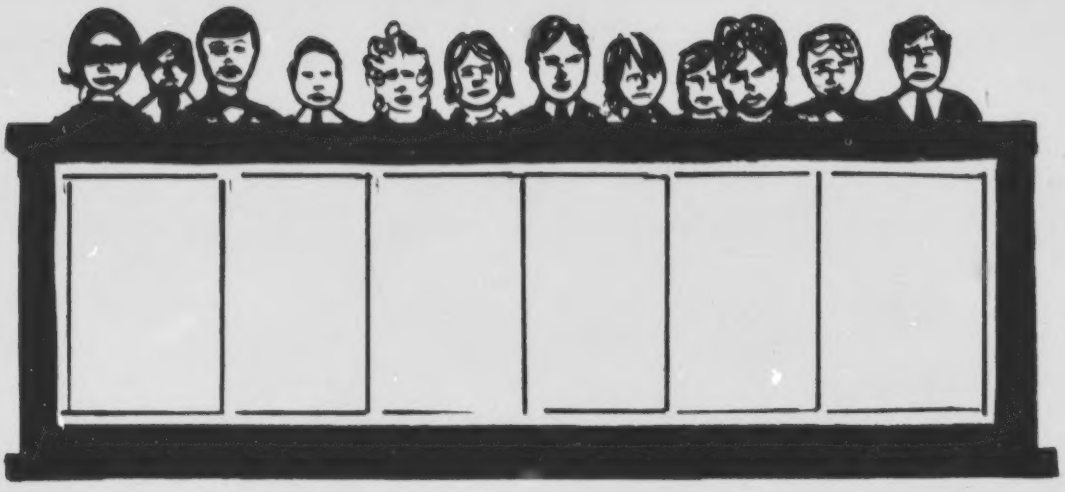
Should Felix not plead guilty, he will eventually come to trial. It is not uncommon for a delay of one year or longer between the commission of an offense and the trial. If the defendant is guilty, it is usually to his advantage to postpone the trial as long as possible. The longer the time between arrest and trial the greater the probability that witnesses to the crime may forget the details of the crime. Both of these factors make it more difficult for a jury to be certain of the defendant's guilt **"beyond a reasonable doubt."**

How are Jurors Selected?

The first task to be completed during the trial is the selection of the **jury**. Ordinarily the jury selection process is relatively simple. A number of citizens from the county (usually chosen from lists of registered voters) have been selected. One at a time each potential juror is questioned by both the defense attorney and the prosecuting attorney to determine if there is any reason to exclude that person from the jury. For example, if the potential juror is a relative of the defendant, he would not likely be seated. If the potential juror admits that he or she has an opinion relating to the defendant's

*See Chapter 3 - Plea Bargaining

00027



guilt, that juror will likely be excluded, or if the potential juror admits **prejudice** toward the defendant, exclusion would occur.

Alternatives for jury decisions. When the trial gets under way, the prosecution presents the evidence against the defendant, with the defense attorney **cross-examining** all witnesses. The defense attorney then has the opportunity to present his evidence favoring the defendant (with the prosecution then cross-examining the defense witnesses). The judge acts as a **referee** to insure that the trial process is fair and protects the rights of the defendant. After the prosecution and defense attorneys have rested their case, the jury will deliberate to determine the **verdict**. Contrary to what most people believe, it is **not** necessary for all twelve jurors to agree on the verdict. It is also not necessary for the jury to have twelve members. The jury has several alternative decisions they may reach:

1. They may find the defendant guilty as charged,
2. They may find the defendant not guilty as charged,
3. They may find the defendant guilty of a lesser charge,

or

4. They may be unable to reach a decision.

If the jury becomes **"hung"** or unable to reach a decision the judge may dismiss the jury and order a new trial.

How are Sentences Determined?

Should Felix be found guilty of burglary the judge is to determine the **sentence**. In West Virginia, most sentences are **"indefinite sentences"** established by the legislature. An indefinite sentence means that the judge could sentence Felix to prison for a length of time ranging from 10-20 years. The actual amount of time he would serve would depend upon his behavior in prison. He could be released in ten years or less if he receives a **parole**, or he could be kept in prison for 20 years. If the judge desires, he could given Felix a **"definite sentence"**. A definite sentence is one which requires the criminal to stay in prison for a set length of time (for example, 25 years unless he receives parole). The definite sentence cannot be greater than or less than the minimum and maximum limits established by law.

At the option of the judge, the criminal may be placed on **probation** rather than in prison. If the criminal is placed on probation, he will be supervised by a probation officer for a length of time determined by the judge.

Upon the conviction of a felony, Felix loses many of his constitutional rights. His right to vote, the right to hold public office, the ability to practice law and medicine are lost.

What is the Purpose of a Parole?

After Felix spends a certain amount of his time in prison he becomes eligible for parole. Parole is similar to probation, except that it occurs after imprisonment instead of before imprisonment. As is the procedure of probation, Felix will be under the supervision of a parole officer. He may also have

certain restrictions placed upon him. For example, he may be forbidden from associating with other ex-offenders, he may not be allowed to drink alcoholic beverages, or he may not be allowed to leave the state. If he violates these parole restrictions, or if he is arrested for a new criminal violation, his parole may be revoked and he may be returned to prison.

Felix will be released from the custody and control of the Criminal Justice System. Of all individuals sentenced to prison for felony offenses, the average amount of time served prior to release is about five years. Although prison sentences in the United States are among the most harsh of any country in the world, our Criminal Justice System probably strives the hardest to make sure that these penalties are inflicted only on the guilty.

The idealized story of Felix is a brief description of our criminal justice as a system. To understand how each segment of the system interrelates to each other, let us investigate further the organization and function of the police, courts, and corrections.

LAW ENFORCEMENT

What kinds of Police are There?

In the United States, there are five basic types of law enforcement agencies: Federal police, state police, local police, military police and private police. Basically, only the first three types are properly considered as a part of the Criminal Justice System. Military police deal only with violations of military law and with violations by military personnel. Private police agencies, such as Burns, Pinkerton and Wells Fargo, are not publicly funded, nor have the same authority as public police agencies do and are only indirectly connected to the other parts of the Criminal Justice System.

Federal police. Federal police have the sole responsibility of enforcing all federal laws. Although the Federal Bureau of Investigation (FBI) is the best known of the federal police forces, it is only one of many. Below is a **partial** list of some of the federal agencies which have law enforcement responsibilities:

AGENCY	**RESPONSIBILITY**
Justice Department:	
-Federal Bureau of Investigation (FBI)	General Enforcement
-Bureau of Narcotics & Dangerous Drugs (BNDD)	Drug laws
State Department:	
-Embassy police	Embassy security
-Immigration & Naturalization	Illegal entry of aliens
Treasury Department:	
-Customs	Smuggling
-Secret Service	Protection of the President
-Alcohol, Tobacco, Firearms Division (AT&F)	Alcohol, Tobacco, and Gun violations
Agriculture Department	Meat & Fruit inspection
Interior Department	Game wardens
U.S. Postal Service	Illegal use of the mail

These federal police agencies are concerned with criminal investigation. Although these agencies are independent of each other, they work together in the apprehension of criminals.

How Do the State Police Differ from other Police?

The state police is similar to federal police except they enforce the laws of their state. Some states separate their police into two agencies, a state bureau of investigation for criminal offenses and a state highway patrol for driving offenses. West Virginia combines both of these responsibilities in one state police. In addition to criminal investigation and highway patrolling, the state police also operate a crime laboratory where local police can send their potential evidence, such as blood samples, or narcotics, for scientific analysis.

The system of law enforcement within the city and the county. Most persons come into contact with local police. Local police are of two types:

(1) Municipal police are responsible for the enforcement of state laws and city ordinances within the city limits. The investigation of crimes and the apprehension of criminals have been the traditional responsibility of the municipal police. Many police departments place emphasis on community relations, crime prevention, and emergency medical assistance, (for example, ambulance service). In fact, the city police are available for almost any service from getting cats out of trees to settling domestic problems. To a small extent, the police are also responsible for operating a lock-up, or jail, for those individuals who are awaiting trial or for those who have been convicted and are serving sentences of less than one year.

(2) In less populated areas, job of lock-up is usually performed by the sheriff's department. The sheriff's department is the second type of local police agency. In West Virginia, as in many states, the sheriff and his deputies have the responsibility for law enforcement in the county where the municipal police have no authority. The sheriff's department is responsible for maintaining the county jail. Another major responsibility of the sheriff's department is to serve warrants and **subpoenas** which are issued by officers of the courts. As "process servers", the sheriff's department becomes involved in civil court as well as criminal court. A fourth responsibility of the sheriff's department is to preserve order and security in the court. This might involve escorting individuals in custody in and out of the court room, removing rowdy spectators, or checking to see that weapons are not carried into the courtroom.

THE COURT SYSTEM

What is the purpose of a court?

The criminal court system in the United States has two basic functions: (1) The system oversees the process whereby the innocence or guilt of the defendant is determined, and (2) the courts pass sentence on those who have been found guilty. The first function is quite complex. Our United States Constitution grants to every individual certain **"inalienable rights"** among these are the right to a fair and impartial trial, the right to a trial by jury, and the right to have an attorney to help in the individual's defense. The Constitution also protects individuals from unreasonable searches and seizures, and it requires that law enforcement officials advise suspects of their right to remain silent. Thus the courts must oversee not only the trial process itself but also much that can happen before the trial occurs. In addition to the Constitution, each state has a constitution which may provide additional protection from potential misconduct by law enforcement or other public officials.

The magistrate's court within the state system. The first level of the court system is a court for minor offenses. In West Virginia, this court is known as a **magistrate's court**. The magistrate's court hears civil claims, traffic violations, and misdemeanor offenses. If a defendant is not satisfied with the decision of the magistrate's court (the magistrate's court seldom uses a jury), he may appeal the decision to a higher level court.

The circuit court. Appeals from the magistrate's court go to the **circuit court**. West Virginia is broken up into thirty-three judicial circuits, with one or more judges for each circuit. The circuit court hears appeals from the magistrate's court and is also a court of original jurisdiction for felony offenses.

That means all felony offenses are heard first in the circuit court. In the circuit court, the defendant has the right to a trial by jury. He may appeal any criminal conviction from this court.

The Supreme Court of Appeals. An appeal from the circuit court would be made before the Supreme Court of Appeals. The magistrate's courts and the circuit courts are convened in the county in which the crime takes place. The Supreme Court of Appeals meets only in Charleston, twice a year. The Supreme Court of Appeals is made up of five Justices. The Justices are elected by the people and serve for twelve years. They may be re-elected. The Supreme Court of Appeals differs from the circuit court in several ways. (1) The decisions of the appeals court are rendered by the Justices rather than a jury. (2) The matter of innocence or guilt is secondary. The purpose of the appeals court is to determine if the defendant's right were in any way violated. (3) Evidence presented to the appeals court comes only in two forms--a written statement of the errors allegedly made in the trial court, and an oral argument made by the attorney. The state also has the opportunity to present its side of the case in a written and oral manner. A full written transcript of the circuit court trial is submitted. (4) The trial in the circuit court may take weeks or even months. In contrast, the presentations before the appeals court seldom take as long as a single day.

Possible outcomes of appeals. Should the Supreme Court of Appeals in West Virginia agree with the arguments of the defense, they may order a new trial or they may allow the defendant to go free. Should they agree with the state and affirm his conviction, the defendant has no other recourse, unless he can show that one or more of his **federal** constitutional rights were violated. If this happens, then he can appeal his conviction to the federal courts.

The district courts in the federal system. (The lowest level federal court in West Virginia is the United States District Court.) The district court is a trial court for all federal violations, both felonies and misdemeanors. It is also an appeals court for individuals convicted in the state courts, who feel that their federal constitutional rights have been violated. There is a trial by jury for the federal offenses but no jury for appeals.

Should the Federal District Court uphold Felix's conviction, he may still appeal to the United States Court of Appeals. The United States is made up of eleven judicial circuits. Appeals from the State of West Virginia would be within the Fourth Judicial Circuit. This court holds sessions in Richmond, Virginia. The Fourth Judicial Circuit includes West Virginia, Virginia, North and South Carolina, and Maryland. The federal appeals courts operate in a fashion very similar to the Supreme Court of Appeals of West Virginia. The basic difference is that while the Supreme Court of Appeals is the highest court in the state of West Virginia, there is only one court in the United States that is higher than the United State Court of Appeals--that is the United States Supreme Court.

The United States Supreme Court is the last stage in all legal disputes, both criminal and civil. This Court has nine members. The Justices are appointed by the President of the United States for life and approved by the Senate. Except in a few situations, all appeals coming to the Supreme Court must come from one of the eleven courts of appeal. It is at the discretion of the Supreme Court whether or not they will accept the appeal for review. If the Supreme Court upholds a defendant's conviction, the decision is final because there is no higher court to which he can appeal.

The Miranda Case. To illustrate the manner in which the appeal system works, let us examine the case known as **Miranda v. Arizona** decided by the United State Supreme Court in 1966. Ernesto Miranda had been arrested in Arizona on a charge of rape. Since Miranda was poor, he did not have enough money to obtain an attorney before his interrogation. He did not know that he had the **right** to see an attorney before questioning. Since he was poor, the state would have provided an attorney without charge. The basic evidence which led to his conviction was a confession which was obtained from him in a "special interrogation" room.

After Miranda's conviction, he appealed his case through the Arizona courts arguing that the constitutional rights given to him in the Arizona Constitution had been violated--that he had been forced into making a confession. The Supreme Court for the State of Arizona upheld his conviction. Miranda then appealed his case into the federal district court in Arizona arguing that his federal constitutional rights had also been violated. Miranda argued that he was not informed of his rights. The federal district court and the United State Court of Appeals both ruled against him. Finally, the United States Supreme Court agreed to hear his appeal. In spite of the fact that every other court had ruled against Miranda, the Supreme Court overturned his conviction and ordered that he be given a new trial. They agreed with his agrument that every individual has a right to be told what his rights are. As a result of this case, law enforcement officers, prior to the interrogation of any suspect, must inform him that:

(1) he has the right to remain silent, (2) that anything he says may be used against him in a court of law, (3) that he has the right to an attorney prior to any interrogation, and that (4) if he cannot afford an attorney one will be provided for him.

This case had done a great deal to change the procedures that law enforcement officers use when investigating criminal offenses. Unfortunately for Miranda, the Court's decision did him little good. In his re-trial he was convicted again and is serving a sentence in Arizona prison.

In Miranda's appeals, the courts were never concerned with the issue of guilt. Their sole concern was whether or not any of those unalienable rights provided to each citizen by the Constitution had been violated.

Why is There a need to Sentence Individuals Differently?

The second function of the court, sentencing, occurs only after the matter of guilt has been settled by the trial. Sentences may be of three types: definite, indefinite, and indeterminate. A **definite sentence** is one in which statutory law determines exactly what the sentence will be. For example, many states are re-establishing capital punishment. Thus when an individual is convicted of first degree murder then the penalty will be death--neither the judge nor the jury can change the sentence since the statute is "definite". An **indefinite sentence** is one in which the statute provides a minimum and a maximum length of sentence but gives the judge the freedom to choose a sentence anywhere between those limits. If the statute provides that the penalty for burglary is "one-to-ten", the judge can give a sentence as light as one year or as severe as ten years. This gives the judge the power to take into account other circumstances related to the offense or the offender. An indeterminate sentence provides the judge with very little freedom in sentencing because the **indeterminate sentence** is really a sentence of somewhere between one day and life. The scope of the sentence is left up to someone else (the prison or the parole commission). In West Virginia, most sentences are indefinite. The question that arises from these differing types of sentence is: Who is the most qualified to sentence--the legislature, the judge, or correctional officials?

THE ROLE OF THE CORRECTIONAL PROCEDURE

What are the Various Ways of Dealing with Convicted Criminals?

Where the judge has the power to set the sentence, he has several options. He may give the individual a fine, he may place him on probation, or the judge might sentence the individual to prison. When either of the last two options is used, the final segment of the criminal justice system takes over.

Probation. Probation is a system where the offender is allowed to remain in the free world rather than going to prison. He will be placed under the direct supervision of a probation officer. The probationer will be required to follow a set of special rules as a condition of his probation. These conditions include restrictions such as:

Probationers are not allowed to:

1. associate with known criminals
2. visit places where alcoholic beverages are sold
3. leave the state without permission
4. marry without permission
5. buy a car without permission

00032

If a probationer violates any of these conditions he may be returned to the court for re-sentencing --meaning that he can be sent to prison if he violates his probation. For offenders who can be trusted, probation is much more desirable than **incarceration** because it allows the offender to remain with the family and be a part of the community.

Should all Offenders be on Probation?

Although probation may be a desirable choice for many offenders, it should be recognized that it is not an appropriate alternative to all offenders. Some offenders (hardened criminals and professional criminals, for example) need to be incarcerated for the protection of society--and sometimes, for their own protection. This is to say that not all offenders can or will be rehabilitated. For those, the prison must be seen purely as a place of confinement, without any consideration for rehabilitation.

The role of prisons. Prisons are a negative experience--no one likes to have his freedom and liberty taken away from him. However, prisons are now establishing programs aimed at training, educating, and rehabilitating the offender so that he may be able to make a successful adjustment upon release. The programs range from elementary, high school, and college educational programs, study release, work release, vocational training, and a wide range of athletic programs. Prison philosophy now stresses incarceration for rehabilitation rather than the older philosophy of incarceration for punishment. Unfortunately, however, prisons have not been very successful in their attempts to rehabilitate. Experts generally concede that somewhere between 40% and 60% of all offenders that are in prison will return to prison a second time.

A problem of prisons. A part of the problem of incarceration is **"prisonization"**. Prisonization refers to the process of learning the inmate social code (which is contrary to the code of the prison administration). One part of the social code, for example, says that "you should never 'rat' on a fellow con". The more firmly entrenched an individual becomes to the inmate social code, the more difficult it is for him to adjust to the outside world. And, the longer an individual remains in prison the greater his acceptance to the inmate code.

Attempts to "humanize" the prison and to reduce prisonization have recently centered around prison architecture. Changes in prison design have emphasized two things. The first is a change from large institutions to small ones. Prisons which have been built for a capacity of over two thousand inmates are becoming obsolete. More common are institutions which hold a maximum of about five hundred inmates, and even smaller. Related to the concept of size is the second change in prison design: security. We are beginning to realize that the massive granite structures built around the turn of the century are not needed. Most inmates can be maintained with less security than they are currently housed. At the same time that we are becoming less security conscious, we are becoming more concerned about visual appearance of our institutions. Maximum security prisons are now being built without any fences, granite walls, or without gun towns. Security can be achieved by using an underground sensing system which will detect when anyone walks over the ground. Consequently, a maximum security institution can be built which will have the appearance of a college campus.

Newspaper article on "Sirhan Parole Data Tentative Feb. 23, 1986" removed to conform with copyright laws.

Parole. The best technique, however, for minimizing prisonization is parole. Parole is similar to probation except that it occurs after the inmate has served a certain portion of his sentence. This portion varies from state to state but is generally somewhere between one-third and one-half of the length of the sentence.

As with the procedure of probation, the parolee is placed under the supervision of a parole officer and may have the same types of restrictions placed upon him as does the probationer. The possibility of parole minimizes prisonization because the inmate realizes that if the prison administration does not recommend him for parole, he is not likely to get it. Thus, in order to get their recommendation, he must conform to their set of expectations.

The parolee may have a more difficult time adjusting than does the probationer because the parolee has been away from the "free world" during his incarceration. This is especially a problem for those who have been incarcerated for more than ten years, because not only have they changed in ten years, the free world has also changed greatly. His home town may have changed, he no longer knows many of the people in his neighborhood, and the job skills that he may have had are no longer useful.

Some limitations of rehabilitation. Rehabilitation in prison has been compared to trying to teach a person to fly a jet plane while in a submarine--it is not an appropriate procedure. It is difficult to teach an individual to live in the free world while holding him captive in an artificial world. Parole is an attempt to minimize this problem but it cannot be expected to be totally effective.

Perhaps the most basic limitation to the efforts to rehabilitate offenders, whether in prison or on probation or parole, is that rehabilitation efforts will for the most part fail, unless the individual desires to be rehabilitated. Many offenders do not feel that they need rehabilitation. They argue that they are the victims of an unjust society, that it is the society that needs to be reformed. There is also the problem of determining what rehabilitative tool to use. For example, what rehabilitative tool is there for a bank president who has been convicted and sentenced to prison for embezzlement, or for the individual who was sentenced for killing his wife in a fit of blind rage, or finally, for the man sentenced to prison for gambling when he knows that his only problem was that he was gambling in a state which prohibits it rather than in a state that allows gambling? There is also a great deal of difficulty in convincing people of the rationale for penalties. For example, why place serious penalties on marijuana possession and use, while alcohol, which is considered as dangerous, is legal?

Cartoon titled "How Does Law Affect Your Life?" shows a baby signing a birth certificate. Removed to conform with copyright laws.

JUVENILE JUSTICE IN THE SYSTEM

J. Justice Reproduced by permission of Scholastic Book Services

How Has Juvenile Justice Changed Since Its Beginnings?

Historically, the juvenile offender in the United States received the same kind of justice as did the adult offender. Juveniles were tried in the same courts of law and they were sent to the same prisons. During the latter half of the 1800's criminal justice reformers began to realize that it was an injustice to treat the juvenile with the same harsh system. After the Civil War, several states began establishing institutions for juvenile delinquents in order that they would not become hardened by the experience of being incarcerated with adult offenders.

A significant trend occurred on July 1, 1899, when Cook County, Illinois (Chicago), established a separate court system for juveniles. The philosophy of this system was to be different. When the system dealt with adults, the function of the court was to ascertain guilt. For juveniles, guilt was to become unimportant. The purpose of the new change was to help the juvenile. In the past seventy-five years the juvenile court system has grown to the point where it can be found in almost every county in every state in the country.

00034

What Can Happen to a Juvenile Offender?

When a juvenile offender is picked up by the police the officer has several alternatives. If the offense is not serious, he may release the juvenile with only a warning. If it is more serious, he may take the juvenile home and talk with his parents. For the most serious offenses, he has the option to turn the juvenile over to the juvenile authorities. This might mean that the juvenile will be forced to stay in a juvenile detention facility or even a county jail for a few days until the juvenile court can provide a hearing for him. Even though serious juvenile offenders go to the juvenile court, if the offense is serious enough (for example, murder) his case may be transferred from the juvenile court to the adult criminal court system.

A problem of juvenile justice. The juvenile court was a good idea. However, over a long period of time it became a disgrace, because instead of trying to help the juvenile, it was more frequently doing him great harm. Juveniles were often getting sentences which were longer than they would have received had they been adult. In addition, many of the constitutional rights that were guaranteed to Americans were not being given to the juvenile. For example, he was not allowed to cross-examine witnesses against him, he was often forced to make incriminating statements against himself, and worst of all, he could be labeled a delinquent without ever having his guilt proven.

The Gault case. In 1964, a 15 year old boy, Gerald Gault, was taken into custody for alleged delinquency. At the juvenile court hearing, but not before, Gault's parents found out that the offense for which he was arrested was for making obscene telephone calls. At the hearing, the "victim" did not appear to testify. Gerald told what happened and he admitted making the calls. He was later placed in a juvenile institution to remain until he reached the age of 21. This was essentially a six year sentence. Had Gerald been an adult, the maximum penalty he could have received was 30 days in jail.

Gault appealed his case to the United States Supreme Court. In this case, known as **In Re Gault**, the attorney for Gault argued that Gault had been deprived of the following constitutional rights: (1) he was not notified of the charges against him, (2) he was not informed of his right to counsel, (3) he was denied his right to confront and cross-examine witnesses against him, (4) he was not informed of his privilege again at self-incrimination, (5) on appeal, he was not given a copy of the transcript of his juvenile court hearing, and (6) he was denied the right to appeal.

The decision. Justice Abe Fortas, writing for the court, said that "Under our Constitution, the condition of being a boy does not justify a kangaroo court". The court thus agreed with Gault on the first four of his complaints. Juveniles still have neither the right to appeal nor the right to a trial by jury. The Supreme Court in a subsequent decision wrote that if we give to the juvenile all of the rights of the adult, then there is no longer any reason to have a juvenile court.

Because of the Gault decision and several others, the juvenile court is much closer to realizing its real purposes: (a) to determine the matter of guilt, and (b) if the child is guilty, to determine how he may best be helped.

Options for juvenile offenders. For those juveniles **adjudicated** delinquent, there is a variety of options that the juvenile court can recommend. They can return the juvenile to his home on probation, where he will be under the supervision of not only his parents but also a juvenile probation officer. There are foster homes for those situations in which the real home is not capable of handling the juvenile (or is unwilling to). The least desirable alternative is to send the juvenile to a training school. Training schools have long had the reputation as being "training schools for crime" where one can learn criminal techniques from older juveniles. It is also undesirable in that juveniles, especially juvenile females, need a home style environment where they can receive love, affection, and attention. Unfortunately, not all homes can provide those commodities.

Juvenile institutions. The average length of time that a juvenile will spend in a juvenile institution is about nine months. During that time he will likely continue his formal education (unless he is already a high school graduate). Chances are that he will also begin to learn some kind of job. It might be anything from farming to barbering, from auto mechanics to printing.

The two most important factors that will influence his length of stay will be the offense that he had committed and the degree to which he is able to adjust to the institution itself. Most juveniles, instead of serving their entire length of time in the institution, will be allowed to go home early and be supervised in an "aftercare" program. Aftercare for the juvenile is the same thing as "parole" for the adult. Aftercare is an attempt to help the juvenile adjust in the community environment. Adjustment in the institution does not necessarily mean that he will adjust upon his return to the community.

THE CRIMINAL JUSTICE SYSTEM AS A SYSTEM

How Do the Parts Work Together?

According to the chart illustrating the criminal justice system as a whole, one would think that the various parts of the criminal justice system are interrelated. Unfortunately, this is not necessarily true. Each of the three basic segments of this system, the police, the courts and corrections are somewhat independent of the other parts and are frequently unaware of the philosophies and the operation of the other parts of the system. Police officers are often critical of the court system, especially the United States Supreme Court, because they feel that the courts are "tying their hands" and letting criminals go free. At the same time the courts are often not totally aware of the negative impact of their actions, despite their good intentions. On the other end of the system, numerous studies have revealed that trial judges who sentence criminals to prison for "rehabilitation" have never themselves seen the inside of a prison really to know to what they are sentencing these people. Finally, correctional people, both in institutional work and in probation and parole are often unaware of the sequence of events that resulted in many offenders coming under their control.

Problems in the system. What finally surfaces is the fact that traditionally these three segments of the criminal justice system are in conflict because of basic philosophical differences. The law enforcement officer sees his primary role as that of investigating criminal acts and arresting violators in order to protect the rights of society. Officers of the court, on the other hand, see their basic job as being the determination of innocence or guilt while at the same time protecting the rights of the accused. Correctional officials are caught between the two in their dual rule of protecting society and trying to help the individual. Criminals are sent to prison both to protect society and to help the individual through "rehabilitation". Unfortunately, by placing an individual in prison, rehabilitation may be made impossible. However, not to place some individuals in prison may endanger society. Thus for corrections, there is a fundamental **conflict** between other criminal justice segments. To add to the problem, there is a fundamental conflict within the correctional segment itself.

Conflict within juvenile justice. This internal conflict is also very predominate within the juvenile justice system. It is the underlying belief in the juvenile justice system that punishment should be used only as a last resort. Juvenile delinquency is seen largely as being the result of immaturity. The juvenile should not be punished but rather he would be given assistance and supervision to assist in his maturation. The need to protect the juvenile is seen as being more important than the need to protect society. However, we cannot totally ignore the need to protect society from juveniles. A victim of auto theft or burglarly is no less of a victim simply because the offender was a juvenile.

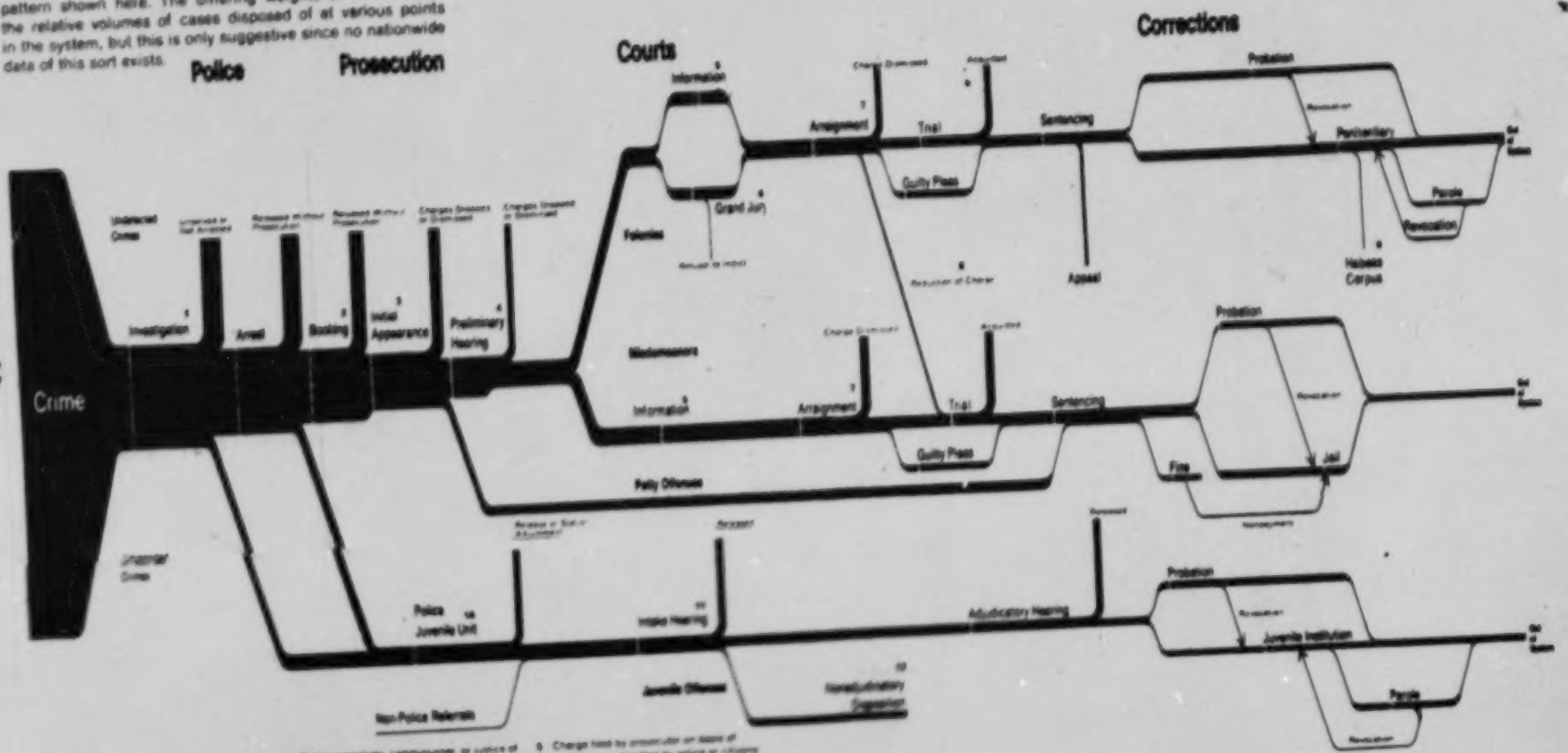
All of the above conflicts are further compounded by the fact that the general public is unaware of the criminal justice system as a whole and how it operates. And all of the police and private investigator type television programs serve only to misinform the public. And finally, the public is generally apathetic about the whole system (or at least until they become a victim of crime).

Should the general public and persons working in all parts of the criminal justice system become more aware of the philosophies and roles, the conflict that currently exists could be lessened. It is imperative to preserve the rights of the individual (even if he is a criminal); but it is also important to preserve the rights of society. The basic question thus is: How can we protect both the rights of society and the rights of the individual? This critical issue will be discussed in detail in a later chapter (along with other critical issues facing the criminal justice system).

00036

A general view of The Criminal Justice System

This chart seeks to present a simple yet comprehensive view of the movement of cases through the criminal justice system. Procedures in individual jurisdictions may vary from the pattern shown here. The differing weights of line indicate the relative volumes of cases disposed of at various points in the system, but this is only suggestive since no nationwide data of this sort exists.



1 Appearance for area, defendant elects trial by judge or jury (if available); counsel for indigent usually associated here in felonies. Often not at all in other cases.

2 Charge may be reduced at any time prior to trial in return for plea of guilty or for other reasons.

3 Before magistrate, commissioner, or justice of peace. Formal notice of charge, advice of rights. Bail set. Summary trials for petty offenses usually conducted here without further preliminaries.

4 Preliminary hearing of evidence against defendant. Charge may be reduced. No separate preliminary hearing for misdemeanors in some systems.

5 Charge filed by prosecutor on basis of information submitted by police or citizens. Alternative to grand jury indictment; often used in felonies, almost always in misdemeanors.

6 Reviews whether Government evidence sufficient to justify trial. Some States have no grand jury system; others seldom use it.

7 Challenge on constitutional grounds to legality of detention. May be sought at any point in process.

8 Police often hold informal hearings, dismiss or adjust many cases without further processing.

9 Probation officer decides desirability of further court action.

10 Welfare agency, social services, counseling, medical care, etc., for cases where adjudicatory handling not needed.

26 000237

VIEWPOINT ON JUSTICE

Is the Criminal Justice System overly concerned with procedure?

When we look at our system of criminal justice we must determine how this system represents **justice**. What is it about the way we deal with crime and criminal offenders that we may call it a system of criminal **justice**? It is important, it seems, to determine when we have achieved justice in our handling of crime and individuals. We must consider the question whether it is always possible to realize justice in matters of crime and handling those accused of crime.

Is it correct to say that the goal of our system of criminal justice is to encourage obedience to our criminal laws by penalizing those responsible for violation of these laws? Perhaps justice may be found in the manner in which we strive to deal with crime. In our system of criminal justice we place emphasis on determining who is responsible for a particular crime by gathering and weighing facts in accordance with specific procedures. Sometimes it even appears that it is more important for us to determine that proper procedure has been followed than it is to see that a person is punished for that crime. When we look for justice, we must examine the procedure by which we bring those accused of crime to a resolution of guilt or innocence.

How does such an emphasis on procedures help us to achieve justice? Some people contend that obedience to procedure does not help us to achieve justice but, on the contrary, only makes it easier on criminals. If, however, we look to the purpose of procedure in our system of criminal justice perhaps we can see that it does assist us in our quest for justice. The most important purpose of procedure is the protection of our Constitutional rights. Keep in mind that until someone is convicted for a crime he or she is presumed innocent. Therefore, all persons suspected of a crime are presumed innocent and entitled to the protection of the Constitution. The Constitution does not give blanket authority to the government to do as it pleases where individual rights are at stake. The government has a duty to insure that certain individual rights are not impaired.

A brief review. Let us briefly review for a moment what is involved in solving a crime and prosecuting the accused. Perhaps, then we can gain some appreciation for the emphasis placed on procedure in our system. It might also be helpful to be aware of the hallmark of our system of justice which is, of course, that everyone is innocent until proven guilty. When a crime has been committed the authority and duty to investigate the crime lies with the police. The police must gather facts about the crime and eventually name a suspect or suspects. In the execution of their duty, the police might need to question people and search homes. Eventually the police might make an arrest. Before a person may be punished he or she must be charged with a crime and brought to trial. During a trial it is the duty of the prosecution to present evidence against the accused to the jury. Only after a jury has found a person guilty may that person be punished for a crime. This is a very real example of the power of the state being directed against the individual. Can you see a possibility for abuse of power here? Can you think of any reason why we place so much emphasis on procedure in our system of criminal justice?

Let's consider some provisions of the Constitution of the United States that are concerned with the rights of a person accused of a crime.

A precedent on procedure. The following case was decided by the Supreme Court of the United States. It concerned the rights of an accused to legal counsel and to remain silent.

Escobedo v. Illinois, 378 U.S. 478 (1964) The police arrested Danny Escobedo and took him to police headquarters for questioning. He had no previous record. He was told that another suspect the police were holding had named him as the one who shot his sister's husband. Escobedo asked to see his lawyer but was not allowed to do so. Meanwhile Escobedo's lawyer had been trying to see him but was not permitted. Eventually Escobedo accused the other suspect of the murder. This was the first time Escobedo had admitted knowledge of the crime which in Illinois was legally damaging. A confession was taken from Escobedo by an Assistant State Attorney who did not advise him of his constitutional rights.

The Supreme Court overturned Escobedo's conviction on the basis that he had been deprived of his constitutional rights. Mr. Justice Goldberg wrote: Our Constitution, unlike some others, strikes the balance in favor of the right of the accused to be advised by his lawyer of his privilege against

00038

self-incrimination. . . .This court also has recognized that "history amply shows that confessions have often been extorted to save law enforcement officials the trouble and effort of obtaining valid and independent evidence. . ."

The conviction in the Miranda case was overturned because his constitutional rights had been violated. Mr. Chief Justice Warren wrote . . .

> The mere fact that he signed a statement which contained a typed-in clause stating that he had "full knowledge" of his "legal rights" does not approach the knowing and intelligent waiver required to relinquish constitutional rights.

The Chief Justice noted that only in America was it an expressed constitutional amendment to be free of self-incrimination and to have counsel.

He established the following measures to assure that one is not deprived of his constitutional protections.

> He must be warned prior to his questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has a right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation.

Cartoon showing police shoot-out was removed to conform with copyright laws.

"Quick! While I keep 'em pinned down, run & bring each of them a lawyer -- and don't forget ours!"

Brooks in The Birmingham News

Reproduced by Permission
from *In Search of America: The Early Years* Martin W. Sandler Ginn and Co. 1975.

CRIME CLOCKS
1973

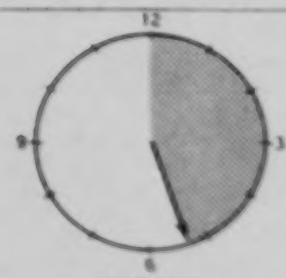
SERIOUS CRIMES

16 EACH MINUTE

VIOLENT CRIMES

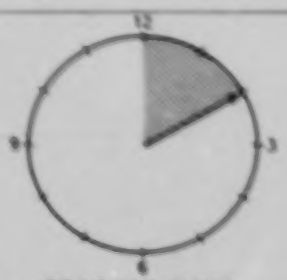
MURDER, FORCIBLE RAPE, ROBBERY OR ASSAULT TO KILL

ONE EVERY **36** SECONDS



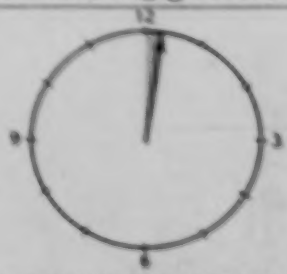
MURDER

ONE EVERY **27** MINUTES



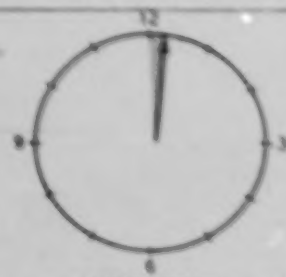
FORCIBLE RAPE

ONE EVERY **10** MINUTES



AGGRAVATED ASSAULT

ONE EVERY **76** SECONDS

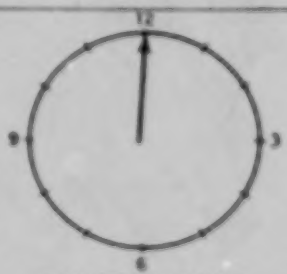


ROBBERY

ONE EVERY **82** SECONDS

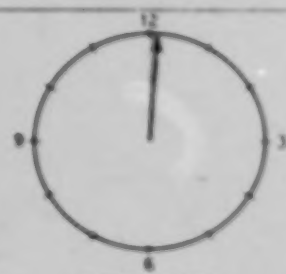
BURGLARY

ONE EVERY **12** SECONDS



LARCENY-THEFT

ONE EVERY **7** SECONDS



AUTO THEFT

ONE EVERY **34** SECONDS

From Uniform Crime Reports, 1973

CHART 4

FBI CHART

00040

CHAPTER 3

CRITICAL ISSUES WHICH FACE THE CRIMINAL JUSTICE SYSTEM

Introduction

Some issues which face the American people include pollution, corruption in government, and the rising crime rate. What determines a "critical" issue? You, your friends and your family face problems or issues in your everyday life. How do you cope with these dilemmas?

Issues and problems confront the agencies which comprise the criminal justice system. The manner in which these problems are solved has an effect on the other parts of the system. It is useful to think of the criminal justice system as a gigantic tube of toothpaste. If pressure occurs at one end of the tube, the other end is strained as a result. Severe pressure could be disastrous. Therefore, as we take a look at some critical issues involving the police, for example, we must keep in mind how these issues affect the total system. For example, if we decide that the police must work harder and make more arrests, in an attempt to battle crime, we will need more judges, more prisons and more parole.

This chapter concludes with a short essay on the concept of "conflict". As you ponder the critical issues described in this chapter, try to imagine ways you could reduce the degree of "conflict" from within and from without of the various criminal justice agencies.

00041

POLICE DISCRETION

Is a Policeman's Discretion Like a Judge's Judicial Role?

When we say that a person has the authority to practice **discretion**, we mean that the person has the freedom to make a decision. For example, a student who is graduating from high school has a number of alternatives from which to choose for the future. He or she may go to college, enter the military, or take a job. Within the limits of these choices, the person has the discretion to choose the avenue most suitable.

In police work, an officer is continually presented with situations in which he is required to make a **discretionary decision**. For example, if a policeman observes a motorist driving safely, but slightly above the speed limit, his first decision is: "Should I stop this car?" If he decides to stop the motorist, a number of alternative courses of action are open to him. He may, (1) write a ticket for the speeding offense; (2) simply warn the driver of the speed limit; or (3) simply let the person go. What circumstances determine the action that the police officer takes? The attitude of the motorist, whether or not there were young children playing in the area, or the number of tragic accidents which have recently occurred as a result of speeders may determine his actions. In addition, the individual officer's attitude toward driving violations is also important. If the officer is a policeman who is involved in trying to solve an important murder case, he may consider this minor traffic violation to be rather unimportant.

The problem of full enforcement. When our legislators pass a law, we as citizens expect that the law will be enforced to its full extent. We expect that every person who commits any crime in the presence of a police officer will be arrested, prosecuted, and **sanctioned**. If a law is not enforced, disrespect for all laws might result. But is this "full enforcement" ideal possible? What would be the consequences for the criminal justice system if **every** minor offender were arrested? Our criminal courts are already busy places, and in many cities a person accused of a crime must wait weeks for his trial. Is an arrest necessary in every case? In our case of the minor traffic offender, is it possible that a stern warning by the police officer will achieve the desired result?

What are some Negative Consequences of Police Discretion?

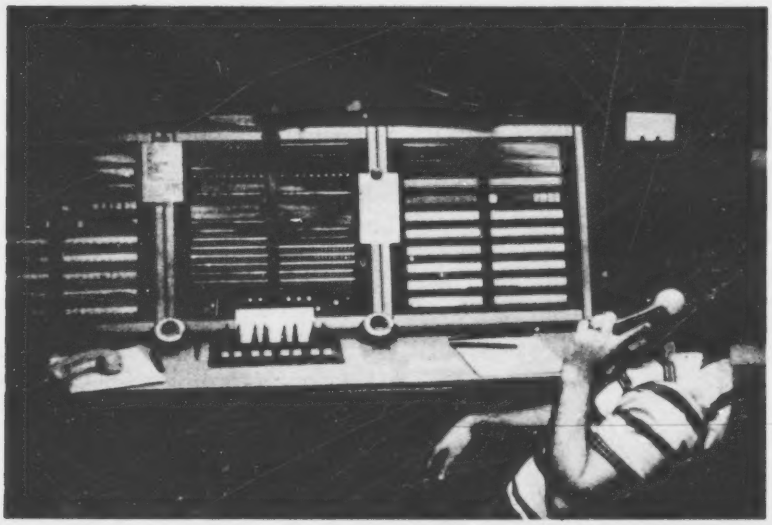
While police discretion is good practice when it corrects minor offenders without the need for a prison term, discretion also has negative consequences. The most crucial problem created by police discretion is the feeling on the part of persons who **are** arrested. Those individuals feel they have been treated unfairly. For example, if a person is caught shoplifting in a department store, the person should be arrested. If a policeman, however, chooses to warn one offender, and then decides to arrest another, the second offender may feel that **he also** should be warned. When arrested, he may feel he has been unjustly treated. Therefore, police discretion may sometimes promote disrespect for the law.

THE PRIMARY FUNCTION OF A POLICE DEPARTMENT

In most cities the police department is the only social service agency that is open 24 hours each day, every day of the year. As a result, many problems which would be handled better by another agency fall into the hands of the police. For example, in many areas, ambulance service is inadequate at certain

00042

times of the day. Therefore, if a person is seriously ill at three o'clock in the morning, there is only one number one may call and be assured of an answer, and that is the police department. Is the primary job of the police to enforce the law or to provide ambulance services? If a husband and wife are having a violent argument, a social worker or counselor may be the best-suited person to assist them. A police officer must be a curious mixture of counselor, nurse, and law enforcer.



Telephone Link to Police, Fire Department, and Ambulance.

Non-police activities. How much of a "typical" police officer's time is devoted to providing these "non-police" services? It has been estimated that less than one-third of the policeman's working day is spent in "law enforcement" duties. The rest of the day is taken up by these other functions, which may range from picking up a stray dog to helping a drunk find his way home. A great deal of time is spent patrolling streets, and checking homes and businesses to insure that doors are locked. These duties can be called "crime prevention" tasks. Finally, some time is spent in other official duties, such as writing reports, participating in holiday parades, protecting public officials at speeches and giving traffic directions.

The more time that we require a police officer to spend in "non-police" duties, the less time is available for him to function in his assigned role of preventing crime and apprehending criminals. In police training schools, the greatest amount of time is spent in teaching techniques of criminal investigation. Criminal investigation procedures are necessary, but it is obvious that we cannot train our policemen for the many roles society expects of our police.

A possible resolution. How can this dilemma be resolved? It has been suggested by many experts that there are two methods of solving this "role conflict". The first alternative is quite simple. Get the police out of the "social service business". This method involves narrowing the duties of police officers to law enforcement tasks alone. It is suggested that the medical profession should handle drunks on the street. Social work agencies should handle family disturbances, and dog catchers, not policemen, should catch dogs. By using this method our policemen will be free to spend all of their working time investigating and preventing crime. Is the solution this simple? Who will pay dog catchers, doctors and social workers to be available twenty-four hours a day? There are other problems with this solution as well. Alcoholics cause crime and are victims of crime. Sometimes a family dispute ends in an assault, or even murder. As a result, the police are involved once again. Also, in some areas, there are not enough doctors and nurses, social workers and counselors available. In these areas, the police department remains the only agency available. A second solution to the problem may be to realize that policemen have a great variety of jobs to perform and must have a great deal of training to perform those tasks. Does this mean that every police officer must learn to be a doctor and a social worker? This would be impractical, but there is a solution. The solution is known as **specialization**.

Illustrations of specialization attempts. Most large police departments are already specialized in some areas. For example, **Traffic Units** are trained in traffic law enforcement and work mostly in

00043

this area. **Detective Units** are trained in criminal investigation. **Juvenile Units** are trained specifically in the needs and problems of youthful offenders. Can we specialize and train policemen in other areas as well? Many police departments throughout the United States are experimenting with this approach. Some police departments now have **Family Crisis Intervention Units**, where the officers are specially trained in techniques for handling family arguments. When the police receive a call of this nature, a member of this specially trained team is sent to the scene.

Many of the suggestions offered can be easily accomplished in cities where large police departments exist. In smaller, more rural areas, it sppears likely that the local policeman will continue to play a wide variety of roles in the course of his working day.

PLEA BARGAINING

Plea bargaining, or plea negotiating, is a severe problem in the minds of many. Plea bargaining takes many forms. A defendant may be allowed to plead guilty to a less serious crime than the one he committed in return for saving the state the cost of a trial. A defendant who is charged with a number of different crimes may have a few of the charges "dropped" in return for a plea of guilty to one offense. A defendant may be offered a "deal" in which the prosecutor will ask the judge for a lenient sentence in return for a guilty plea.

What is the Extent of Plea Bargaining? In the United States, it has been estimated that as many as 85-95% of all criminal defendants plead guilty. We cannot accurately estimate how many of these guilty pleas have been "bargained", but the number is considerable. Therefore, our system of criminal courts, which in many areas is clogged by an overwhelming number of cases, is only hearing about 5% of all possible criminal trials. If for some reason, every criminal defendant chose to exercise his **constitutional rights** to a full trial, the impact on our criminal courts would be disastrous. Therefore, guilty pleas help the criminal justice system save time and money. What are the motives behind plea bargaining? We will examine these motives from two points of view: (1) Why does the prosecutor want to plea bargain?, and (2) Why does the defense attorney desire to plea bargain for his client?

What is the Prosecutor's Role and What are Some Reasons for Plea Bargaining?

A **prosecuting attorney** may be inclined to enter into a plea bargain for a number of reasons. First, as mentioned earlier, a guilty plea means great savings in time and money which are required to research, prepare and argue a case before the court. Secondly, if a defendant chooses to plead guilty to one offense in return for the prosecutor's promise to drop other charges, the prosecutor and police can "clear the books" of the other cases. Third, despite the face that the prosecuting attorney may have a convincing case against the accused, there is always a chance that a judge or jury will decide not to convict. In a case such as this, many prosecutors would rather receive a conviction (by guilty plea) to a lesser offense than to take a risk of acquittal by going to court. In cases where the prosecutor's proof is weak, he is even more strongly inclined to "bargain".

Finally, the prosecuting attorney may reduce the charge in return for information concerning other criminals and their crime.

●

The defense attorney's role. The most common reason behand a defense attorney's willingness to plea bargain is that he hopes to obtain a lesser sentence for his client. Realizing that the likelihood of gaining a "not guilty" verdict is slight, he attempts to persuade the prosecutor to reduce the charge to a lesser offense in return for a guilty plea. For example, if the defendant is charged with armed robbery, he may agree to plead guilty to a charge of unarmed robbery; a crime which carries a lesser penalty. Other reasons are also present. If the charge against the accused is public intoxication, for example, a conviction may result in making it extremely difficult for the defendant to find a job. By pleading guilty to disorderly conduct, the defendant may feel that his criminal record will not appear as severe, thus making employment easier to obtain.

Does Plea Bargaining Serve the Idea of Equality Before the Law?

Does plea bargaining have a proper place in a system of justice? This is an issue that has been argued by many criminal justice officials. On the one hand, our judicial process operates on the assumption that most defendants will plead guilty. On the other hand, we allow criminal defendants to plead to offenses that are less than the crimes that they have actually committed. Is this just? If the citizen who has been a victim of an armed robbery learns that the criminal has been allowed to plead guilty to unarmed robbery, how will this affect the victim's respect for the criminal justice system?

00044

Also, plea bargaining creates problems for correctional workers. First, correctional authorities must keep in mind that the offense for which the prisoner is incarcerated **may not be** the crime the person actually committed. As a result, their diagnosis of his problems and treatment efforts may be misdirected. Second, plea bargaining causes bitterness which makes the corrections task more difficult. Imagine that two prisoners share a cell who have committed the same crime. One person is serving a sentence of 20 years for his actions. The other inmate, who successfully plea bargained, has received a 5 year sentence. Will the inmate with the 20 year sentence feel that he has received justice?

What are Some Controls on Plea Bargaining?

Many proposals have been suggested in an attempt to control the problems created by plea bargaining. In 1973, the **National Advisory Commission on Criminal Justice Standards and Goals**, recommended that plea negotiation be totally abolished by 1978. What would the impact of this decision be for our judiciary? In the meantime, other controls have been established by the courts. These controls are designed to bring plea bargaining into the open, rather than claiming that it does not exist. For example, when defendant pleads guilty, in most cases the judge is required to ask the defendant if his plea is **voluntary**, and if he is aware of the possible consequences of his decision. If the accused says, for example: "I'm really not guilty, but I can't prove it, so I guess I'll plead guilty to get it over with...," the judge will not accept the plea of guilty.

In conclusion, plea bargaining is a problem which has many sides to it. In attempting to resolve the issue, we must keep in mind all of the possible effects that our decisions may produce.

SENTENCE DISPARITY

How can Disparity in Sentencing be Controlled?

The dictionary defines disparity as "not equal". In criminal justice, we say that sentences are **disparate** when two individuals, convicted of the **same crime**, committed under the **same circumstances**, having the **same background**, receive radically different sentences. An important issue must be understood, however. Two sentences which are **different**, are **not** necessarily **disparate**. Here is an example: You are a criminal court judge who is faced with determining an appropriate sentence for each of the following defendants, all of whom have been convicted of the crime of **kidnapping**.

(1) Defendant number one is a young woman whose baby recently died. She was convicted of taking another woman's baby from a shopping cart left momentarily outside a supermarket. She took the baby home and gave it excellent care until the police located and arrested her.

(2) Defendant number two is a man who took his own daughter from the child's mother, who had legal custody of the girl after their divorce. He took her to a foreign country but returned her voluntarily when located.

(3) Defendant number three is a kidnapper for ransom. He took the young daughter of a wealthy banker and held her for a million dollars ransom, repeatedly threatening to kill the girl if he did not receive the money. He was captured by the F.B.I. as he attempted to pick up the ransom, and the girl was returned to the parents. He has an extensive criminal record, mostly for serious offenses.

As the sentencing judge, let us assume that you have a range of sentences from which to choose for the crime of kidnapping. You may sentence these kidnappers from 1-50 years in prison. Do you think all three defendants should receive identical sentence, say 30 years? Or, does the variety of circumstances of these crimes and the backgrounds of the offenders lead you to decide that one is more serious than another, and should, therefore receive a different sentence? If each offender receives a different sentence, then the three sentences are **disparate**, or "unequal". But is this disparity good or bad? In this example, we can see that in striving for justice, punishments must be **individualized**. This type of disparity in sentencing is necessary, because the three offenders present different degrees of threat to society.

Attitude of the court. As mentioned earlier, however, there is another type of disparity in sentencing which creates problems. Here is an example: Let us imagine that in a certain county there are three criminal court judges, all of whom have different opinions and attitudes concerning the crime of shoplifting. Judge "A" feels that shoplifting is a minor offense, and the best method of handling offenders is to give stern warning to the shop lifter. Judge "B" feels that the crime is a problem, so he

00045

issues a $500.00 fine in order to convince shoplifters of the seriousness of their offense. Judge "C" considers shoplifting to be extremely serious, feeling that it leads to more extensive crimes. As a result, he sentences shoplifters to 6 months in jail, and a $500.00 fine. The shoplifter in our imaginary county is in a risky situation. The sentence that he receives will not depend on his background, or the circumstances of his crime, but rather on which one of the county judges is selected to sentence him. In this case, we can say that the judges are giving **disparate** sentences.

Consequences of disparity in sentencing. There are many consequences of sentencing disparity. First, the offender who has the bad luck of having Judge "C" sentence him may feel that he has not received justice from the courts. It is important that our criminal justice system not only **be** fair, but also **look** fair. The "appearance of unfairness" can cause bitterness which makes it extremely difficult to rehabilitate the person who feels that he has been the subject of injustice. Secondly, sentencing disparity causes public criticism of the criminal justice system.

Suggested resolutions to the problem. Many suggestions have been offered. For example, the Supreme Court has declared that a defendant has a constitutional right to an attorney at the time he is sentenced. It is hoped that a lawyer will be able to protect his client from any unfairness or discrimination at this critical hearing. Other suggestions have been recommended by the **President's Commission on Law Enforcement and the Administration of Justice**. Here are some of their recommendations:

(1) **Sentencing Institutes**

This proposal involves gathering judges together in a group meeting to discuss their sentencing policies. It is hoped that discussion and exchange of ideas will cause the judges to be more uniform in their sentencing practice.

(2) **Sentencing Councils**

This suggestion involves taking the sentencing decision out of the hands of a single judge and placing it with a group of judges. In the shoplifting example given before, perhaps the three judges can come to a compromise decision in every case; thus the county's sentencing policies will be more uniform.

(3) **Appellate Review**

This proposal calls for a right to have a sentence reviewed by a higher, or appellate court. Thus, if a defendant feels that he was unfairly sentenced by a judge, he could ask another judge to review his sentence to determine if it were too severe.

(4) **Mandatory Sentences**

If a crime has a mandatory sentence attached to it, the sentencing judge has no choice. He must give every offender the same sentence as long as the crime is the same. After reading the example of the three kidnappers discussed earlier, do you think that mandatory sentences are a good alternative?

PURPOSE OF PRISONS

Why are these Prison facilities different?

00046

What is the Purpose of Prisons?

As we previously discussed in Chapter 1, when Americans began constructing prisons in the 1800's, they had clear-cut goals which the prisons were to fulfill. Successful prisons would do three things. First, they would reform the criminal. Rehabilitation would restore the criminal to society as a law-abiding, productive member. Second, confinement to prisons would deter people from committing crimes. Prisons were never designed to be enjoyable places where anyone would desire to go. Therefore, correctional institutions would persuade potential criminals to mend their ways or else they would suffer imprisonment. Finally, prisons would protect society by removing dangerous persons from the community while their rehabilitation was taking place.

After nearly two centuries of building and operating prisons, many citizens and criminal justice professionals are still asking two basic questions: (1) Do prisons work?, and (2) Are they successful in achieving their goals?

Many people today feel that the best way to deter crime is through punishment. Others contend that punishment will not work, and that we should seek to "help" the criminal to reform. The debate over punishment or rehabilitation creates a problem of "goal conflict". The debate over whether prisons should punish or rehabilitate is one of the most important issues facing our criminal justice system.

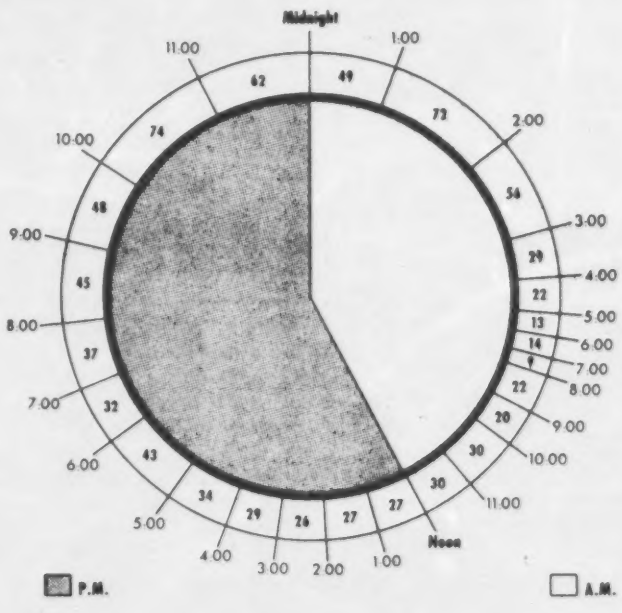
Can Prisons Rehabilitate Criminals?

For many decades we have assumed that the answer is yes. We have designed and built prisons on the assumption that once we get the criminal inside, we have the knowledge and ability to "change" him. To this end we commit millions of tax dollars every year. Correctional departments across the nation hire psychiatrists, social workers and counselors by the thousands as rehabilitation experts. Prisons have various programs, ranging from vocational training to group therapy. Halfway houses are established in many communities to provide a bridge for the offender before he or she is released from the prison into the community. Parole officers work to find jobs for released offenders, try to help them with problems, and to protect society.

Despite these attempts which have been half made, our results have been discouraging. Official estimates indicate that of all the offenders who pass through our corrections system, over 50% will return. Prisons are not rehabilitating over half of all offenders. F.B.I. statistics show that 77% of all police officers killed in the line of duty in the last ten years were murdered by persons with prior arrest records.

LAW ENFORCEMENT OFFICERS KILLED
by Hour of Day
1964-1973

FBI CHART



From *Uniform Crime Reports*, 1973, United States Printing Office Publication: Washington, D.C. p. 44

00047

What are Some Problems in Current Rehabilitation Programs?

Why have prisons failed to rehabilitate criminals and deter crime? Many experts throughout the nation are seeking an answer to this problem. Some believe that prisons should forget about rehabilitation programs and emphasize punishment. According to psychologists, for punishment to be effective in changing behavior, it must be swift and certain. For example, if your dog misbehaves today, it would be meaningless to slap him for his misbehavior next week. He would not remember what he had done wrong and would feel as through your punishment was for no reason. This same principal explains a problem with our criminal justice system. Our system is neither swift nor certain. In many cases it takes years to prosecute a criminal. Delays caused by investigation, cloges courts, and appeals can drag a case on almost endlessly. In addition to this, not every crime committed results in imprisonment. In this respect we can view the criminal justice system as a large funnel. As we go down the funnel, large numbers of offenders are able to escape the "system". Not all crimes which are committed are reported to the police. Of those reported, not all crimes result in arrest. Some are never solved, and in other cases, the police are unable to secure proof. Of those criminals who are arrested, many have their cases "thrown out" of the system along the line, for a variety of reasons. For example, the prosecuting attorney may not be able to convince the jury of the offender's guilt. Finally, not all offenders found guilty are sentenced to prison. Some are granted probation, others are merely fined. In the end, only about 2% of all crimes result in prison terms. If imprisonment is neither swift or certain, can it be an effective deterrent to crime?

What Can be Done to Solve This Dilemma?

A few people today say that we should tear prisons down if they are not working. Is this a realistic alternative? As long as we have members of our society who harm or threaten other people, citizens have a right to demand that the criminal justice system protect them. Prisons fill this need, at least as long as the offender is behind bars. Therefore, it seems reasonable that we will always need some type of prisons. How can we make our prisons effective in rehabilitating criminals? There are many suggestions in this area. For example, the United State Bureau of Prisons has recently concluded that forced rehabilitation does not work. From now on, they will **offer** reform programs to inmates who want them, and no longer force prisoners to change. We are now, beginning to realize that some criminals do not want to change, so rather than forcing them to, we will simply keep them in secure custody. Society will still be protected, and no more money will be wasted on those prisoners who won't change.

Other recommendations have also been made. It has been suggested that the prison of the future should look completely different from those we have today. For example, these new prisons will be much smaller than our current ones, and located close to the cities where the inmates live. Families will then be able to visit, and the prison could make use of the community's doctors, teachers, and other professionals. In addition, many different methods of speeding up the criminal justice process have been suggested. This will require a strong committment on the part of all citizens. We must convince citizens that all crimes should be reported to the police. Also, we must be willing to hire more prosecutors and judges to reduce court delays.

VIEWPOINT ON CONFLICT

What causes people to demand laws?

As we look at our system of criminal justice, we would be amiss if we did not direct some attention to the conflicts within our society and some conflicts within our system of criminal justice. The attempt here is to identify some of the areas where conflict arises among persons in our society and at what point this conflict becomes the concern of the authorities. General areas of conflicts which concern our system of criminal justice might be: 1) conflicts involving property; 2) conflicts involving one's person; 3) conflicts involving one's conduct in public.

At what point do the actions of an individual or individuals become criminal? Some people might say that actions become criminal when the legislature makes them so. However, it seems that legislatures declare acts criminal when those acts become harmful or go against the public welfare. In other words criminal law may be viewed as a demand-response concept. Some acts which are criminal today may not have been seen as harmful to the public welfare in earlier times and were, therefore, legal. Perhaps circumstances did not demand a law. Acts which are criminal today may at a later date be seen as no longer harmful and, therefore, be made legal. Why might this be so? Could it be because we do things differently from generation to generation?

00048

An example of a needed change. What are your impressions of the following law drawn from the West Virginia criminal statutes in light of the above considerations? Section 61-6-16. "Wearing hats in theaters and places of amusement; penalty."

> No person attending any performance at any theater, hall, or opera house, or any such building where theatrical or other performances are given, when an admission fee is charged, shall wear upon his or her head any hat, bonnet, or covering for the head which may obstruct the view of any person or persons during the performance in such theater, hall, or opera house or other building where such performances is given; and if any person wear upon his or her head any hat, bonnet, or other covering for the head . . . and refuse or fail to remove the same at the request of any person or persons whose view may be obstructed, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than two nor more than ten dollars. (1897)

Would it be accurate to say that when conditions require changes a law will be passed to solve the problem? This statement would seem to have some worth, for why would legislators bother to pass a law if it were not aimed at solving a problem?

When is a problem great enough to demand a law for its remedy?

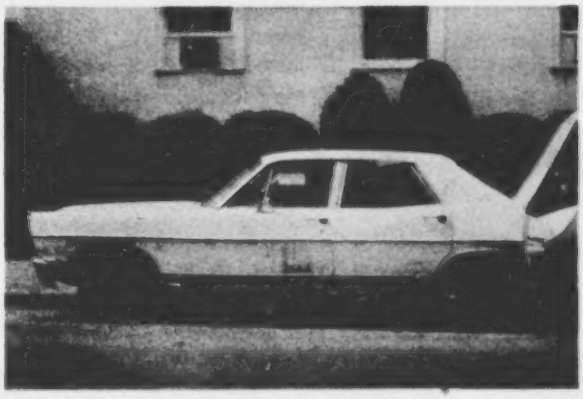
Is it measured by the number of people who complain about the problem; or how loud people complain; or the danger or unrest the problem presents to society; or the degree to which the problem affronts our sense of morality; or the amount of influence an interest group can muster; or is pure logic the reason behind all laws; or is it the weight of tradition; or is it a combination of all these reasons; or is it some other reason? It is probably a combination of these and perhaps other reasons that cause most laws to be passed.

Let's take a look at some laws as they appear in the books just to give us an idea of what a law looks like. This might be helpful since we are attempting to identify the kinds of conflict with which our laws are concerned. As we do this, try to imagine the necessity for the law and speculate on why a particular law was passed. Questions a person might ask as he or she considers a law might be whether the law reflects a problem and if so, what kind of problem, has the problem always existed, and will it always exist.

All states have their criminal laws codified and the laws are bound in volumes much like an encyclopedia. So if you wanted to find out what the law of a state was on a certain topic, you would go to the volume concerning criminal law and probably find a table of contents much like the one below. It is taken from the West Virginia Code.

Chapter 61.
Crimes and Their Punishment.
Art.

1. Crimes Against the Government
2. Crimes Against the Person
3. Crimes Against Property
3A. Shoplifting
4. Forgery and Crimes Against the Currency
5. Crimes Against Public Justice
6. Crimes Against the Peace
7. Dangerous Weapons
8. Crimes Against Chastity, Morality and Decency
9. Equitable Remedies in Aid of Chastity, Morality and Decency
10. Crimes Against Public Policy
11. General Provisions Concerning Crimes
12. Post-Mortem Examinations



What category would this fit under?
Police Tow

The following laws are taken from the same chapter of the West Virginia Code.

Section 61-2-10. "Assault during commission of or attempt to commit a felony; penalty."

> If any person in the commission of or attempt to commit a felony, unlawfully shoot, stab, cut or wound another person, he shall be guilty of a felony, and upon conviction, shall, in the discretion of the court, either be confined in the penitentiary not less than two nor more than ten years, or be confined in jail not exceeding one year and be fined not exceeding one thousand dollars.

00049

Section 61-3-13. "Grand and petit larcency distinguished; penalties."

> If any person commits simple larceny of goods or chattels, he shall, if they be of the value of fifty dollars or more, be deemed guilty of grand larceny and upon conviction thereof, shall be confined in the penitentiary not less than one nor more than ten years; and if they be of less value, he shall be deemed guilty of petit larceny and, upon conviction thereof, be confined in jail not exceeding one year.

Section 61-6-1. "Suppression of riots and unlawful assemblages."

> All members of the department of public safety, all sheriffs within their respective counties and all mayors within their respective jurisdictions may suppress riots, routs and unlawful assemblages. It shall be the duty of each of them to go among, or as near as may be with safety, to persons riotously, tumultuously, or unlawfully assembled, and in the name of the law command them to disperse; and if they shall not thereupon immediately and peaceably disperse, such member of the department of public safety, sheriff or mayor giving the command, and any other present, shall command the assistance of all persons present, and of all or any part of other law enforcement personnel available to him, as need be, in arresting and securing those so assembled. If any person present, on being required to give his assistance, depart, or fail to obey, he shall be deemed a rioter.

How much support do laws require?

Do you think laws must have the support of the majority to be effective? This is an interesting and perhaps difficult question because it raises further questions which get at the matter of the purpose and origin of law. One is led to wonder whether laws come from the people in our society or are laws imposed on us? It would seem that in a representative system of government such as ours that there would be some if not a great deal of connection between the laws and the will of the people. Is this the way you see laws in our society? Is this the way it would be? Or do you think our laws are made by learned persons who know what is best for our society and make laws accordingly? Is this the way it should be? What would happen if a law did not have the support of most of the people?

Let's consider a law which may help us answer some of these questions. On January 16, 1919, the 18th Amendment to the Constitution of the United States became law. This law forbade the "manufacture, sale or transportation of intoxicating liquors . . . for beverage purposes" in the United States. On December 5, 1933, the 21st Amendment was ratified and become law. This law repealed the 18th Amendment. From this date on it was left to the various states to decide whether to forbid the manufacture, sale or transportation of liquor within their boundaries. What happened? Why was national prohibition repealed? Why was the 18th Amendment ever passed? It seems that many factors influenced enactment and ratification of the 18th Amendment. Moral, religious, social, and economic considerations all effected passage of the amendment. The demand for prohibition was heightened by World War I because of economic considerations. There was a fear that intemperance would cause a loss of manpower and that food needed to supply the army would go instead to the manufacture of alcohol. However, there seems to have been some problems with the law. One problem was that enforcement was left with the national government and that agency was not able to keep up with the task. Another problem was that many citizens defied the law. Section 2 of the 18th Amendment states "The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation." Both the state and national governments, therefore, had power to enforce the 18th Amendment. But many states chose not to because it was not popular. Sentiment against the 18th Amendment grew until both national political parties in 1932 favored repeal.

What determines a good or a bad law?

Reflecting on these circumstances how would you answer the question whether a law can be a good law if it does not have popular support?

Most states have been greatly influenced by the English common law. Therefore, you will find most of the felonies of English common law incorporated into the criminal statutes of most states. English common law had its beginning in the customs and usages developed in England before and after the Norman invasions. The courts of England recognized, affirmed, and enforced these customs and usages when disputes were brought before them for resolution. The felonies in English common law are murder, robbery, manslaughter, rape, sodomy, larceny, arson, mayhem and burglary. Why do you think American states would incorporate English law into their own laws? Do you think this reflects the circumstances concerning the early development of this country?

CHAPTER 4

CRITICAL ISSUES REGARDING LAWS, CIVIL LIBERTIES, JUVENILE JUSTICE, MINORITIES AND WOMEN

Introduction

In your reading of Chapter 3, you discovered that there were issues which sometimes caused the criminal justice agencies to come in conflict with each other. This Chapter examines issues which are related to the public and to those individuals which are processed through the system of justice.

As you read the sections which follow try to imagine how you might react to these issues if you were a legislator, a juvenile, a person representing a minority, and a woman faced with incarceration.

DECRIMINALIZATION

Should this law be retained?

Are there Good Reasons for Not Enforcing the Law?

Decriminalization means sanctions for criminal behavior have been removed. A good example of decriminalization can be seen with gold. Until late in 1974, it was illegal to buy or sell gold in the United States with the exception of jewelry and monetary purposes. In 1974, Congress passed a law making it possible to buy and sell gold. Thus what was a criminal offense in 1973 is no longer considered to be criminal. Buying and selling gold has been decriminalized.

Decriminalization occurs when the law is no longer needed to control people's actions, or when society decides that this activity is no longer harmful. Unfortunately, many laws are not removed from the statutes when they become obsolete. The law remains but the police simply do not enforce it. For example, in West Virginia "No criminal prosecution against a citizen of this state who aided or participated in the war between the government of the United States and a part of the people thereof, on either side, shall be maintained in any court of the state...." (W.Va. Code 61-11-23).

The major reason for decriminalization is that if a law loses its usefulness it should be eliminated. Laws should have a purpose. The law against theft was established to protect property. If it does not accomplish that purpose then the law is not useful. A second argument for decriminalization is that a streamlined legal system is easier for the citizen to understand. The legal system makes the assumption that everyone knows the law, because ignorance of the **law is no excuse for criminal conduct**. We have literally thousands of laws. It is not possible for individuals to know all the laws. In fact, it is not

00051

at all uncommon to find attorneys and judges looking through law libraries in order to determine questions of legality. If useless laws were removed from the statutes, there would be less confusion. A third argument for decriminalization is that fewer people would be characterized as being a criminal. Consider our procedures for handling alcoholics. We have known for years that arresting public drunks and putting them in jail neither protects the public nor does it solve the individual's drinking problem. Could damage be done in that the drunk is brought into contact with "real" criminals? In addition, putting alcoholics through the criminal justice is very costly, and it contributes to the backlog of cases that must be processed.

Newspaper clipping on "Maryland Restores Death Law" removed to conform with copyright laws.

Are There Some Good Reasons Why We Should Retain Laws?

The arguments against decriminalization are few. It can be argued that the process of changing laws is too expensive, and it is more economical to stop enforcing the law. A second argument is that even though the law is not needed now, it might be needed again in the future. Consequently, it should be left in the statutes. For example, with the intense security now used at airports to prevent skyjacking, very few offenses now occur. Should the law against skyjacking be decriminalized? Those opposed to decriminalization believe that the law should remain as a deterrent to future skyjackers.

How Can We Decide When a Law is No Longer Needed?

The real problem is to determine which laws are useful and which laws are not. Experts in criminal justice believe that we have a crisis of "overcriminalization". That is, the criminal sanctions are being applied to too many types of behavior. The solution to "overcriminalization" is decriminalization. The National Commission on the Causes and Prevention of Violence in 1969, recommended the decriminalization of offenses related to drunkenness, drug addiction and prostitution. A major move is being made in the 1970's to add marijuana use to the category of decriminalized offenses.

When analyzing offenses related to moral statutes (such as prostitution and gambling) and nuisance statutes (such as loitering, vagrancy, and the use of profanity) the issue of **need** is critical. Are these laws needed for the protection of society? What would happen to society if these activities were not against the law? Should the state be allowed to regulate the morality of others?

Can you justify the death penalty?

Whether or not the above types of behaviors will be decriminalized will rest, in the future, with state legislatures. Their decisions will likely be based on their view of the role of the state regarding decriminalization. Should the state protect a person against himself, or should he be allowed to do anythin he wants as long as it does not affect anyone else? This issue will be studied in more detail in the next "critical issue".

When we followed Felix through the steps in the criminal justice system, we were viewing most of the rights of the individual. This would include the right to bail, the right to an attorney and the privilege against self-incrimination. The full list of Constitutional protections related to **criminal** procedure can be seen in the Appendix.* Since we assume that a person is innocent until proven guilty by a court of law, we cannot knowingly deprive an individual of these rights.

However, we also recognize that all members of society have rights also. Basically, our government promises to protect us from harm. It also agrees to protect our property from theft and destruction. This protection is achieved by apprehending criminals and by preventing other persons from becoming criminal. The techniques by which this might be accomplished are not simple.

INDIVIDUAL RIGHTS VS SOCIETY'S RIGHTS

Two crime models of crime prevention. Let us consider two suggested means by which the criminal justice system attempts to deal with the criminal. The first method is called the "Crime Control Model." This model, generally supported by law enforcement officials, conveys that one the criminal has been arrested we should assume that he is guilty. The purpose underlying this principal is that if he were not guilty, then he would not have been arrested. Since guilt is already assumed then all of the Constitutional protections are only obstacles standing in the way of swift punishment and thus Constitutional questions should be ignored.

The second method, called the "Due Process Model", maintains the idea that an individual is innocent until he is proven guilty. Since innocence is assumed, then every Constitutional protection should be perserved. An arrest is not sufficient to prove guilt because policemen have arrested innocent people. With this approach it is necessary to prove at every step of the criminal justice process that the individual is guilty and that his rights have been preserved. From this approach, if the police, or anyone else, violates the Constitutional rights of a person then they are violating the law and they are no better than any other criminal.

With the Crime Control Model, the individual's rights are violated in order to preserve the rights of society. More criminals can be apprehended, convicted, and punished, thus protecting society. With the Due Process Model the individual's rights are being maintained sometimes at the expense of society. There are numerous examples of hardened criminals being set free by the courts because the police used illegal techniques to obtain evidence.

Some suggested changes. The problem that exists in our criminal justice system today is to develop a system which can protect both individual rights and the rights of society. It is possible, but not simple. Changes in at least three areas would be necessary. The changes suggested include:

(1) **Police professionalism**. As police become more professional it becomes less necessary to use illegal means to obtain evidence. Thus the police will be more able to uphold the criminal's rights while still protecting society.

(2) **Decriminalization**. If the so-called "victimless crimes" were removed from the statutes, it would mean that more than one-half of the arrests made in the United States would no longer be necessary. This would give the police a great deal more time to investigate other crimes and it would reduce greatly the backlog of cases waiting to be tried in court.

(3) **Community Awareness**. As the community becomes more aware of the crime problem, they should become more sympathetic and more cooperative with law enforcement agencies in the investigation and prosecution of criminals.

JUSTICE FOR JUVENILES

Should Juveniles Receive a Different Form of Justice?

We can define a **status offense** as being those activities which are uniquely illegal for juveniles only. Status offenses would include such things as running away from home, truancy, smoking cigar-

00053

ettes, drinking alcoholic beverages, and staying out after 11:00 p.m. Adults are allowed to do these things because they are "adult". Juveniles are not allowed to do these things because they are not yet 18 years old. Adults may drink as long as they do not get drunk in public.

In many states, juveniles who have committed status offenses may be decared to be a "juvenile delinquent". This label, applied by the juvenile court judge, means that the juvenile may be placed in a juvenile "training school". This would mean that a juvenile who has been truant from school might be brought into contact with juveniles who have committed felonious offenses, such as burglary, auto theft, rape, and perhaps even murder. In the next critical issue relating to the juvenile justice system, we will see that this interaction of juveniles might be more harmful to society as a whole than the original truancy would have been.

A difference in states' laws. In other states, a person can be declared a juvenile delinquent only if he has committed an offense which is also against the law for adults. For example, in the State of Tennessee, a juvenile who was picked up by the police for drinking beer in a local bar, could not be sent to a juvenile training school because that behavior would not have been illegal for an adult. This does not mean, however, that he cannot be punished for this infraction. Although he cannot be labeled a juvenile delinquent, he can be labeled as being a "Person in Need of Supervision". And being a person in need of supervision, the juvenile court can place him under the supervision of the welfare department, the juvenile probation department, place him in a foster home, or can utilize several other "corrective" alternatives.

The matter of labeling a person delinquent because of status offense is only a part of the problem. The real issue is perhaps whether or not there should be status offenses. In other words, why should juveniles be prohibited from doing things that adults are allowed to do? If an adult is allowed to consume alcoholic beverages why should not juveniles be given the same rights? The idea behind status offenses is that juveniles are not yet able to engage responsibly in certain activities. Thus, society is attempting to "protect" the juvenile until he is mature enough to make responsible decisions and actions. The fact that these types of behaviors are not illegal for adults indicates that they are not inherently bad.

A problem area. The problem is complicated by the fact that not all people mature at the same rate. Some people may be able to act responsibly at different ages. Others may not be able to act responsibly at the age of thirty. Yet the law sets its regulation on the basis of chronological age rather than emotional maturity. The issue is further clouded by the fact that different states establish different age limits for "adulthood".

Some have suggested that if all status offenses were eliminated it might lead to more rapid maturation of juveniles because they would learn to be responsible at an earlier age. At the same time, however, elimination of status offense could lead to erratic and problematic behavior because of diminished regulation of their behaviors. Neither approach can promise a solution but either extreme could create further problems.

THE JUVENILE COURT

Juvenile justice. Until the end of the nineteenth century juveniles who had been arrested for criminal offenses were tried in the same courts as were the adults. July 1, 1899, marked the beginning of the juvenile court system in the United States. Because juveniles were immature, it was believed that they should be sheltered from the harshness of the court procedures used for adults. Consequently, the prosecution of juveniles took on the appearance of a civil trial rather than a criminal one. The original purpose of the court was not to ascertain guilt but rather to do whatever was necessary to "help" the juvenile.

Sixty years of gross abuses in the juvenile court system led the Supreme Court in several significant cases (*Kent v. U.S., In Re Gault, In Re Winship*, and *McKeiver v. Pennsylvania*, among others) to reverse the purpose of the juvenile court so that now the matter of innocence or guilt is of first importance. If the juvenile is not found to be guilty of the offense charged, then the juvenile court judge has no reason to intervene into the juvenile's life. However, if the juvenile is found guilty of a crime or status offense then the judge can impose a variety of punishment or rehabilitative devices. Technically the process is not intended to **punish** any delinquent, but being sent to a juvenile institution can hardly be called a reward. Thus, over time, the juvenile court has operated both as an attempt to determine guilt and as an attempt to "help" the juvenile. The question remains what are the advantages and disadvantages of each approach?

Those who argue that the juvenile court should be established mainly to ascertain guilt first, provide these reasons: (1) The Founding Fathers who wrote the Constitution did not indicate that the Constitutional rights granted in the Bill of Rights should not apply to the juvenile. Historically (until 1899) these rights did apply to juveniles because they were being tried in the **same** system as the adults. Thus the development of the juvenile court actually deprived the juvenile of those Constitutional rights. (2) If the juvenile is to have respect for the system of justice he must be convinced that justice is **equal** for all. Cases such as In Re Gault, discussed in the last chapter, clearly indicate that the justice that is provided to the juvenile is not the same as the justice applied to the adult. (3) Without the necessity of proof of guilt, a wide range of discriminatory possibilities are open to the judge. For example, if a juvenile male lets his hair grow long and refuses to cut it, a juvenile court judge could say that the boy is in need of supervision and order that his hair be cut -- even though long hair is not against the law.

The basic philosophy of this point of view is that if we expect the juvenile to act responsibly, society must act responsibly to him. The requirement that guilt be established beyond reasonable doubt is the first step in that direction.

Those who argue the other position, that the juvenile court should be primarily concerned with "helping" the juvenile, present the following reasons: (1) By avoiding the matter of guilt, it is possible to refrain from using labels such as crime and criminal. Juveniles would be seen as being "delinquent" rather than criminal, as the term delinquent was in some way supposed to be less damaging to the juvenile. (2) The juvenile court is supposed to act as a juvenile's "parent". As a parent the juvenile court is more concerned with developing proper behavior patterns than with punishing an individual for old (undesirable) behavior patterns. (3) If it is necessary to prove guilt, then a lot of juveniles who need help, will not be helped, because it would not be possible to prove that they committed an offense. (4) The fact that the court, as originally designed, has been abused should not require that the concept be abolished.

The resolution of this issue lies somewhere in between these two extremes. The juvenile court should still be concerned with the matter of helping the juvenile, but it must be done in a manner that it does not treat him as a second class citizen. His constitutional rights can be maintained without giving up the "parental" concern for doing what is best for him. In the long run, what is usually best for the juvenile and for society as well is to instill in the juvenile the feeling that he has been treated fairly.

MINORITIES IN THE CRIMINAL JUSTICE SYSTEM

What is the Status of Racial and Ethnic Minorities in the System?

Our system of justice has been charged with discriminating against blacks and other minority groups. Non-whites make up less than fifteen percent of our nation's population according to the 1970 census. Yet they account for nearly thirty percent of all arrests. In 1970, a survey of thirty-four states showed that over forty-three percent of criminals placed in prisons were non-white.

Investigate the national statistics regarding minorities in the Criminal Justice System.

00055

Do the above figures mean that non-whites are being discriminated against? Not necessarily. William Chambliss and Richard Nagasawa studied crime statistics and concluded "that official statistics are so misleading that they are virtually useless as indicators of actual deviance in the population?"

There have been many studies supporting both sides of the argument. Some studies conclude that there is discrimination against the minorities and others conclude that there is no discrimination. In his study of capital punishment for rape offenders in Florida between 1945-1965, Marvin Wolfgang found that "it is abundantly clear that Negroes receive differential sentencing, and especially when the rape victim is white." On the other hand, a California survey of the death penalty in murder cases showed no differences in sentencing with reference to white, Negro,, Mexican-American, and other offenders. In fact, as seen in the Table below, white defendants were somewhat more likely to receive the death penalty that non-white defendants as surveyed in California.

Defendant's race	Life Sentence	Percent	Death Sentence	Percent
White	65	52.4	59	47.6
Negro	51	60.0	34	40.0
Mexican-American	19	76.0	6	24.0
Others	0	0	4	100.0
Total	135	56.7	103	43.3

Perhaps the most authoritative study of discrimination in sentencing has been done by Edward Green who comes to the conclusion that

> the analysis of the data...discloses no warrant for the charge of racial discrimination in sentencing: Variation in sentencing according to the race of the offender does exist, but it is a function of intrinsic differences between the races in patterns of criminal behavior?

Green's findings suggest that blacks are more likely to receive more severe sentences, not because they are black, but because their behavior is more likely to be violent than a white criminal and he is more likely to be a repeat offender than a white criminal. It is these factors, among others, Green explains why blacks are more likely to receive longer sentences.

If there is a serious problem of discrimination in the criminal justice system it is more likely to be the result of social class differences and not racial differences. Statistics on crime and criminality, show that lower class persons are arrested more frequently than the middle class persons. The middle class person has a better chance of acquittal in court because he can afford better legal assistance than the lower class individual. Finally, because of social class related factors, a middle class individual is more likely to receive a light sentence than a lower class person committing a similar offense.

The Supreme Court has been trying, in recent years, to minimize the discrimination that exists in the criminal justice system. In spite of this, however, some racial and social class discrimination does still exist.

WOMEN IN THE CRIMINAL JUSTICE SYSTEM

A few years ago, the subject of women criminals and their experiences with the criminal justice system would not have been included in a discussion of the American system of justice. For example, in 1967 President Johnson called together experts in criminal justice from all over the country to discuss, study, and plan for the future of the criminal justice system. In the ten volumes of reports which were issued by their commission, not one paragraph was devoted to the female offender. The reason for this is that in the past, women have not been considered a great problem in crime rates. For example, in 1970 there were six men arrested for every one female in the U.S.

In recent years, however, crimes committed by women have shown a dramatic increase. In fact, crime **rates** for women have increased much more rapidly than male crime rates in the past five years. In the ten year period from 1960-70, the F.B.I. reported that the male arrest rate increased 73%. In the same period, arrests of women went up 202%, or nearly three times faster. Crimes committed by females under the age of 18 have shown the sharpest increases. For example, between 1960-1973, arrests of girls under 18 for murder rose 296%; for robbery, 476%; for driving under the influence

00056

(of alcohol or drugs), 588%, and for violation of narcotic drug laws, over 6,000%. In each of these crime categories, arrests for males under 18 did not rise nearly as rapidly (see chart below).

Table 28.—*Total Arrest Trends by Sex, 1960–73*

[2,378 agencies; 1973 estimated population 94,261,000 [1]]

Offense charged	Males						Females					
	Total			Under 18			Total			Under 18		
	1960	1973	Percent change	1960	1973	Percent change	1960	1973	Percent change	1960	1973	Percent change
TOTAL	2,891,354	3,695,870	+27.8	397,842	889,333	+123.5	351,220	686,068	+95.3	66,312	248,713	+264.1
Criminal homicide:												
(a) Murder and nonnegligent manslaughter	3,761	9,048	+140.6	312	1,098	+251.9	780	1,581	+102.7	25	99	+296.0
(b) Manslaughter by negligence	1,580	1,469	−7.0	123	201	+63.4	185	191	+2.7	9	15	+66.7
Forcible rape	6,857	13,823	+101.6	1,185	2,753	+132.3						
Robbery	29,710	77,264	+160.1	6,993	27,265	+289.9	1,487	5,748	+286.6	359	2,071	+476.9
Aggravated assault	43,141	93,097	+115.8	5,668	16,435	+190.0	7,261	14,979	+106.3	638	2,871	+350.0
Burglary—breaking or entering	113,227	199,718	+76.4	53,497	107,009	+100.0	3,857	11,811	+193.3	1,652	5,597	+238.8
Larceny—theft	158,733	291,645	+83.7	78,222	143,789	+83.8	31,710	139,861	+341.1	13,153	61,124	+364.7
Auto theft	52,128	82,679	+58.6	31,640	46,614	+47.3	2,074	5,296	+155.4	1,299	3,133	+141.2
Violent crime [2]	83,469	193,232	+131.5	14,158	47,551	+235.9	9,528	22,308	+134.1	1,022	5,041	+393.2
Property crime [3]	324,088	574,042	+77.1	163,359	297,412	+82.1	37,641	156,468	+315.7	16,104	69,854	+333.8
Subtotal for above offenses	409,137	768,743	+87.9	177,640	345,164	+94.3	47,355	178,967	+277.9	17,135	74,910	+337.2
Other assaults	103,892	157,831	+51.9	10,173	28,844	+183.5	11,264	25,154	+123.3	1,765	7,443	+321.7
Forgery and counterfeiting	17,807	20,536	+15.3	1,153	2,173	+88.5	3,522	7,637	+116.8	349	908	+160.2
Fraud and embezzlement	26,015	38,911	+49.6	643	1,786	+177.8	4,536	17,297	+281.3	136	590	+333.8
Stolen property; buying, receiving, possessing	8,348	43,139	+416.8	2,355	14,580	+519.1	799	5,002	+526.0	176	1,345	+664.2
Weapons; carrying, possessing, etc	29,114	78,675	+170.2	6,166	13,161	+113.4	1,751	7,074	+304.0	187	780	+321.9
Prostitution and commercialized vice	6,796	10,186	+49.9	119	409	+243.7	17,535	30,166	+72.0	294	1,186	+303.4
Sex offenses (except forcible rape and prostitution)	33,635	33,080	−1.8	6,311	6,203	−1.7	5,947	2,663	−55.2	2,427	875	−63.9
Narcotic drug laws	25,605	280,407	+995.1	1,488	67,776	+4,454.8	4,284	48,263	+1,026.6	237	14,564	+6,045.1
Gambling	96,244	40,175	−58.3	1,190	1,145	−3.8	9,363	3,808	−59.3	40	94	+135.0
Offenses against family and children	33,006	21,709	−34.2	483	366	+23.8	2,900	2,354	−18.8	214	155	−27.6
Driving under the influence	134,000	383,019	+185.6	1,066	5,234	+391.0	8,696	30,818	+254.3	59	406	+588.1
Liquor laws	70,180	92,604	+32.0	14,863	34,660	+133.3	11,555	16,788	+45.3	2,344	8,660	+269.5
Drunkenness	1,117,121	778,421	−30.3	10,968	19,731	+80.0	98,434	59,130	−39.9	1,246	3,228	+159.1
Disorderly conduct	314,416	256,316	−18.5	39,226	57,394	+45.9	49,873	61,215	+22.7	6,945	12,470	+79.6
Vagrancy	117,138	25,409	−78.3	6,327	3,366	−46.8	10,505	15,099	+43.7	824	723	−12.3
All other offenses (except traffic)	348,900	666,755	+91.1	117,596	287,330	+144.3	62,899	174,633	+177.6	33,934	120,367	+254.7
Suspicion (not included in totals)	108,785	26,431	−75.7	19,651	7,998	−59.3	14,411	4,445	−69.2	3,000	1,432	−52.3

[1] Based on comparable reports from 1854 cities representing 79,540,000 population and 524 counties representing 14,711,000 population.
[2] Violent crime is offenses of murder, forcible rape, robbery, and aggravated assault.
[3] Property crime is offenses of burglary, larceny, and auto theft.

From U.S. Superintendent of Documents
Uniform Crime Reports for the
United States. Washington, Government Printing Office, 1973 p. 126

Why are we witnessing such a tremendous increase in criminal behavior by women? Could it be that women have become more criminal "overnight"? Or, if this is unlikely, are there other explanations for this change?

One explanation which has been suggested is that police officers, prosecutors, and judges are becoming less reluctant to arrest, prosecute and convict women. The American criminal justice system is dominated in every phase by men. For example, the F.B.I. reports that in 1973, 98.3% of all sworn police officers were men. This domination by males is seen throughout the system. A study indicated that "as a general rule, policemen are not eager to arrest women". The result is that for non-serious offenses, the policeman in many cases will call the female criminal's husband or father and request that he handle the punishment and compensation of the victim.

00057

Prosecutors, also, are not eager to try and convict a woman (especially if she has small children). Judges are even less likely to break up a family by sending a mother to prison for a few years. Therefore, crimes by women have been dealt with in the past through a system of "informal justice". This phenomena is indicated by the fact that for every thirty women who are arrested in America, only one will actually receive a prison sentence. While women slightly outnumber men in the American population, prison populations in America are 97% male.

What conclusion can we come to about women and criminal justice? It would appear from the statistics available that there is discrimination in the criminal justice system in regard to women. This discrimination is of two types. First, in selecting personnel for police departments, probation and parole agencies, correctional institutions, and in the judicial system, women, in the past, have been excluded. While this is slowly changing due to the women's movement for equality in all areas of employment, much remains to be done.

Second, the statistics on female arrest and imprisonment rates seem to indicate that the criminal justice system discriminates **in favor** of women, and against men. If two persons commit the same crime, and one is a male while the other is female, we know that the male is much more likely to be arrested, prosecuted, convicted, and sent to prison. It remains to be seen whether this type of discrimination will continue as the criminal justice system approaches the twenty-first century.

In conclusion, there is one thing that should always be kept in mind when we discuss discrimination in the criminal justice system. That is, the system of criminal justice is just one part of the total society that we live in. If there is discrimination in society, this will be reflected in the criminal justice system.

00058

CHAPTER 5

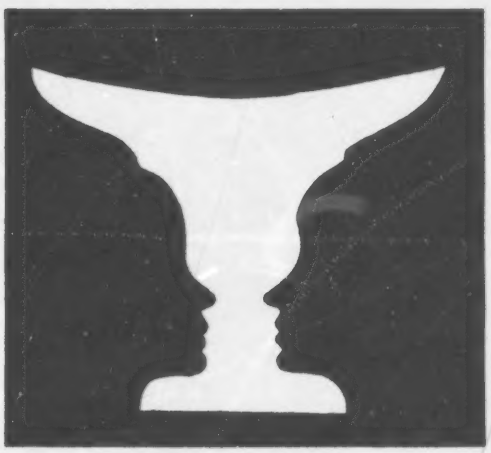
THE CRIMINAL JUSTICE SYSTEM AS VIEWED BY THE POLICE, THE COURTS AND THE CRIMINAL

Introduction

What does **perception** mean to you? How does it affect how you feel toward things in your life? In order to make sense out of life, humans have the unique ability to order senations they receive. Because a wide variety of individuals have had experiences they tend to view and to interpret experiences differently.

This chapter examines how many people perceive the Criminal Justice System. There is also an attempt to relate how the various agencies view themselves. As you read the following pages, think about these questions:

1. Can one's perception hinder or assist one's function with a system?
2. Should one rely on emotion rather than reason when making decisions about life and death?
3. Is there a means available to reduce one's perceptional barriers (e.g. prejudices)?



What do you see? Why?

00059

PUBLIC PERCEPTION OF THE POLICE

Can the Public's View of Police Have an Effect on How Police Function?

The public's view of the police will vary greatly depending upon the circumstances. If a citizen has just been aided by the police, he is likely to be appreciative. However, if he has just been given a traffic ticket he is likely to be disgruntled. What will be emphasized here are misconceptions or exaggerations that are perpetuated about the police.

The public feels that all criminals should be caught and wonder why the police are not doing more. Police make arrests in about twenty percent of all reported property crimes. Even homicide offenses result in an arrest about eighty percent of the time. We should recognize, however, that we cannot expect the police to make an arrest for every crime that is reported to them. It is an impossibility. It is like expecting Hank Aaron to hit a grand slam homerun every time he comes to the plate. (Obviously he cannot hit a grand slam homerun if there is no one on base, but neither can the police make an arrest if they can find no evidence to identify the offender).

Corruption and Full Enforcement. The police are often charged with lack of professionalism. This charge usually comes to light when accusations of brutality and police corruption are made. Police work is an occupation in which both brutality and corruption are possible. There are instances when criminal prosecution of police officers must be instituted. However, it is improper for the public to believe that all police officers are brutal and corrupt. One of the conclusions drawn by the National Advisory Commission on Civil Disorders was that, given the nature of their job, they were surprised that there was not more police brutality than was found. Although corruption does exist for some individual policemen, there is no evidence that it is a common occurrence in police departments throughout the country.

Finally, the police are criticized for not enforcing the law fully. If every drunk is not arrested, if every gambling operation is not closed down, and if all prostitutes are not run out of town, many feel that the police are not doing their job. This view, that all laws should be enforced to the letter, is not only impractical but impossible. There are three reasons for not enforcing the law to the letter: (1) The police have neither the time nor the money to enforce the law fully; therefore, they must emphasize the more serious violations, and (2) The public does not demand that certain violations be enforced. For example, speed laws may not be stringently enforced because most people may not care if they are fully enforced. (3) The public **demands** that certain laws not be enforced. In many parts of the country, gambling is done freely without fear of arrest because large segments of the public demanded that they be allowed to gamble. It was through this type of action that Prohibition was ended -- as large segments of society demanded that the police not enforce the liquor laws.

What is the Public's View of the Court System?

With regard to the court system, the public often expresses the sentiment that the judges are "coddling the criminal". They view the court system as the place where the criminal is going to be

punished. However, they do not feel that the sentences given by the judges are severe enough. And, when a defendant is released because his Constitutional rights had been violated, it is seen as a miscarriage of justice. The problem lies in the differing attitudes of the public and the judge. The judge must accept the premise that a defendant is innocent until proven guilty. Many times the public tends to believe that because a person has been arrested he must be guilty. Disagreement with the judges can be a source of frustration for the public. The reason for this is that of all parts of the criminal justice system, the judiciary is probably the most immune to criticism.

What is the Public's View of Corrections?

The public's view of corrections is likely to be distorted because most citizens have never been inside a prison. Until recently, the idea of building prisons has been to build prisons in rural areas so that they would be out of the sight of the public. Prisons were established as places for punishment in order to teach the criminal that "crime does not pay". In the past hundred years, however, we have been trying to utilize prisons as places for rehabilitation and training. The public is troubled when offenders come out of these "rehabilitation" institutions and return to a life of crime.

The claim is sometimes made that the prisons are "coddling the criminals", also. The prisons must be coddling them because criminals are not being taught that crime does not pay. Furthermore, use of probation and parole are becoming much more widespread. Society expects to be protected from criminals. On the other hand, the courts and correctional officials are attempting to keep the criminal in the community rather than locking him in prison where society will be protected.

Recalling Felix and the law, what do you suppose will be the next step in this process?

00061

Obviously, the criminal justice system has not found the solution to offender rehabilitation. However, the fact that approximately fifty percent of all criminals in prison have been there before, should indicate that prisons are not a very effective solution. In the short run, society is made safe by the imprisonment of offenders. However, in the long run, society may be in greater danger because when the offender is released he is more likely to have become a hardened criminal for the rest of his life, than if he had received probation or parole quickly. Although some probationers and parolees do commit crimes while under supervision, these crimes are often of a minor nature.

Two basic views. The public's view of the criminal is centered around two basic viewpoints. The "majority" view has the perception that criminals are dangerous, hardened, committed to a life of crime, and in general "bad". This perception is based more on the mass media (newspapers, television, movies) than on first hand experiences. It is the murderer, the rapist, or the drug pusher that is more likely to gain newspaper headlines and television coverage. Consequently, for many, all criminals is that although individuals have violated the law, they are not basically "bad", but that they do have problems. Many crimes are committed our of need: a man steals because he needs money to against property is different from one who commits against the person. The middle class "white collar" offender is different from the lower class criminal Criminals who commit violent crimes (murder, manslaughter, rape, robbery, and aggravated assault) represent only about one percent of all criminal violations in the United States. On the other hand, nearly forty percent of all criminal arrests are for public drunkeness.

Another view. The second public view we will call the "minority view". Their view toward criminals is that although invidivuals have violated the law, they are not basically "bad". But that they do have problems. Many crimes are committed out of need. A man that steals because he needs money to buy food to feed his family. Statistics suggest that with unemployment rates increasing in 1974, the crime rate is also increasing. The minority view is not saying that the criminal is justified in committing crimes, rather they are saying that there are other factors to consider when viewing crime rates. If we expect individuals to live within the law, then we must provide means for them to earn an honest living. Is it reasonable to expect an individual to sit back and starve to death because he cannot get a job?

What Kind of a View is Needed?

One criminologist has suggested that perhaps the only real difference between the criminal and the non-criminal is that the non-criminal has not been caught for his crimes. This proposition may not be too far from the truth. Various surveys where the individual will answer questions on an anonymous questionnaire find that the majority of persons will admit to having committed at least one offense in the past year for which they would have been sent to jail.

In general, the public's view toward the criminal justice system and the criminal are, in a large part, affected by what they read and what they see on television. Television series often tend to glamorize law enforcement, make it appear that the police always catch their criminal, and that the criminal is also a "public enemy number 1". The real world of law enforcement and criminal justice has little similarity to these dramatizations. Unfortunately, large segments of the public do not realize this. Consequently, they expect the real world criminal justice system to be as effective as the make-believe world of television.

What are Some Viewpoints from Criminal Justice Personnel?

The police are often critical of the court system and of the correctional system for "coddling the criminals". The police often feel that they have gone to a great deal of trouble to apprehend the criminal so that he can be "put away". It sometimes appears to law enforcement personnel that the court and correctional agents are putting the criminal right back on the street. Court officials are often critical of law enforcement because of their unprofessional conduct in the execution of their duties. When the police fail to follow official procedure this results in the court releasing criminals from prosecution. Correctional officials are often critical of the courts for sentencing some individuals to prison terms when sometimes it would be a proper alternative to consider a different sentence. Within the correctional system there are major differences of opinion concerning the handling of offenders. The custodial officials are in conflict with the "treatment" officials because many rehabilitation programs create custody problems. In a similar fashion, the "treatment" staff argue that rigid custody standards make it impossible to offer rehabilitation programs to a large number of inmates. The conflicting philosophies that exist in the criminal justice system are likely to continue to exist until the system, as a whole can agree on a single approach to the criminal and his problems.

00062

Cartoon entitled "What Does Law Mean to You?" was removed to conform with copyright laws.

J. Justice Reproduced by permission of Scholastic Book Services

Does the Public Really Care?

Persons in the criminal justice system view the public as being apathetic about the dilemmas related to solving the crime problem. The public wants crime stopped and they want the criminals off the streets, but they are viewed as being unwilling to do anything to help the police, the courts, or the correctional systems. Citizens who are witnesses to crime often refuse to testify against the criminal because they do not want to become involved. Often victims of crime are unwilling to report crimes to the police because their loss is covered by insurance. Employers frequently refuse to hire ex-offenders. If no one will hire the ex-offender, then how can we expect him ever to become a productive citizen again? Citizens have come to believe that the sole responsibility for law enforcement is with the police. Without the support and cooperation of the public, no aspect of the criminal justice system can be effective in crime control.

Not all citizens, however, are apathetic. More and more individuals are volunteering their time to assist police in crime prevention programs, to work with juveniles to keep them out of the juvenile court, and to work with correctional agencies as volunteer probation officers and as counselors and teachers in prisons. This type of assistance helps the criminal justice system to operate at less cost and more importantly, it gives the citizen a greater understanding and appreciation of the magnitude of the problem involved in crime prevention and the rehabilitation of offenders.

Two professional views. Professionals in the criminal justice system hold a wide variety of viewpoints about crime and criminals. One can find persons who are sympathetic to the criminal and his problems as well as persons who have no sympathy for them. Let us examine two extremes. On one extreme there is the "Principle of Least Eligibility". Persons holding this view argue that criminals who have rejected society and its norms should be the "least eligible" to receive the services that society has to offer. In other words, why should we spend money trying to rehabilitate criminals when we could spend that money on people who deserve it more? On the other extreme there is the "Principle of Greatest Eligibility". This principle states that criminals should be given all of the resources that society has to offer in an attempt to make them productive citizens. That individuals have become criminal is indicative of the fact that they need more help than non-criminals.

The majority in the criminal justice system probably fall somewhere in between these two extremes mentioned above. Since these workers come into contact with criminals, they are much less likely to stereotype criminals. People within the system make professional judgments regarding the nature of rehabilitation. At the same time they can see others who cannot or will not be rehabilitated. Not all offenders are visualized as being hardened criminals. But neither are they all seen as being a "victim" of unfortunate circumstances. Some people that are sent to prison **should** be there. What is **your** feeling toward drunkenness?

What are Viewpoints of the Criminal?

Most criminals have little respect for the police. The criminal basically dislikes the policeman because he is the one that initially deprives the criminal of his freedom. Charges of police brutality and police corruption represent only a small part of the real issue. To the criminal the police represent the "square" side of life. Were it not for the police most criminals would never be caught. Even if the police were the most polite, courteous, and respectful people in the world, the criminal still would not like him. This dislike is not usually a personal thing, however. The criminal has a disdain for the policeman because of his role or his job. It is the similar feeling that two rival schools have for each other.

The attitude of the criminal toward the court system is somewhat more subdued. Since many recent Supreme Court decisions have restricted certain police practices, criminals tend to be less critical of the court system. Most criticisms against the courts appear to revolve around the issue of disparity in sentencing. The judge, you will recall, has the authority to sentence. The attitude of the criminal toward the police was impersonal: all cops are disliked. With judges, this attitude may be different. Judges develop reputations as being either lenient or harsh, fair or unfair. Thus, some judges will be liked by the criminal while others will be hated.

Criminals have the greatest amount of contact with persons in the correctional system. The custodial officer (guard) is the most visible symbol of authority and is the most disliked agent in the system. Their feelings toward the rehabilitation staff may either be negative or positive. The criminal is unhappy about being sent to prison. From his standpoint, **he** is the victim of an unjust society. Even though most criminals plead guilty in court, they will still go to prison claiming they are innocent and were "framed". Inmates feel that their freedom should not be taken from them. Furthermore, since it is society that has erred, not the criminal, there is no need for rehabilitation. As long as this view is maintained, any hope of behavior change is unlikely. To the criminal, imprisonment is all a part of a conspiracy by the government to eliminate him and everyone like him who has different attitudes and values from society. This view is especially common among the "political" criminals.

Criminals who have been placed on probation or parole are likely to be unappreciative of the supervision that they are receiving. The probation and parole officer are more likely to be viewed as "just another policeman" rather than as counselor who would truly attempt to help him solve his problems.

These perceptions by criminals of people in the criminal justice system are not necessarily held by all criminals. The major exception might be the professional criminal. The professional criminal is one who sees crime as a life's work, and he strives for excellency at what he does. Counterfeiters, con artists, safe crackers would be examples of professional criminals. Being professional they realize that getting caught and being sent to prison is an "occupational hazard". If they continue in their profession sooner or later they are probably going to be caught. Because of this perception, the professional criminal is more likely to accept people in the criminal justice system for what they are -- professionals too, but in a different profession.

VIEWPOINT ON TRUTH

What is the bond between evidence and truth?

Through our system of criminal justice we attempt to determine the truth when a crime has been committed and on that basis punish those responsible. It is to this end that we require our law enforcement agencies to follow specific procedures in the investigation of crime. For example, police are not supposed to beat a suspect to get a confession. Rather their duty is to use their ability to uncover the facts of a crime without violating the suspect's Constitutional rights. A jury hears both sides of a story when a suspect is being tried for a crime because this process assists in protecting the rights of the accused, also. It is the duty of the jury to decide the facts of the case. In this system there is ultimately no guarantee that we will always arrive at the truth. Can you think of a better way?

Why is it difficult to determine the truth?

It is difficult to determine the truth of any past event whether it is a crime or any other activity. Because of this problem we must rely on other people to recount details of the event. Then an attempt is made to reconstruct the situation as it was when the event occurred. Because we are not viewers of sports events on television we do not have the aid of "instant replay" to help us to determine the truth of a past event. Even in a casual setting two people may witness the same event and yet they may "see" it differently. This is to say that if both people were to recount the same event the result might be two different versions of what happened. A jury faces a similar problem when it sits in judgment of the accused. The seriousness of the problem is much greater, of course, because the accused has much more at stake.

When we consider the concept of truth in our system of criminal justice it is evident that it is not an absolute truth. In most cases absolute truth, it seems, would be all but impossible to achieve. But, if this is so, surely we must ask what level of truth, if there are levels of truth, we will accept as **just**. It would also seem important to determine how we arrive at an acceptable level of the truth.

We rely upon a jury of twelve people to decide the truth about the guilt or innocence of a person accused of a crime. A jury is made up of twelve peers of the accused. In other words, the facts of the case are determined by twelve ordinary people. The setting for presentation of the facts is an **adversary proceeding**. A government prosecutor presents evidence against the accused and the accused presents evidence in his favor either in person or through a lawyer. It is the duty of the judge to make sure that only evidence dealing with the case at hand is presented during the trial. After the presentation of evidence, it is the duty of the twelve jurors to decide on the basis of the weight of the evidence where the truth lies.

What are some of the written rules which provide for obtaining the truth?

The manner in which we arrive at the truth in a criminal proceeding says much for the kind of truth we will accept. We demand that truth have a basis in **fact**. And we place our confidence in twelve ordinary people, like ourselves, to decide the truth after hearing evidence from both sides.

This is taken from the Texas Penal Code:

2.01. "Proof Beyond a Reasonable Doubt."

> All persons are presumed innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a **reasonable doubt**. The fact that he has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial.

Note that this statute requires that proof must be beyond a reasonable doubt before a person is guilty of a crime, before he or she may be convicted of that crime. This is typical of the kind of proof required by most states for conviction of a crime. Does it seem to you that this is a good standard for determining the guilt of a person? Why did they not write the law to say that a jury must be absolutely certain of the truth before it finds a person guilty of a crime?

Do you have confidence that a jury in our system of criminal justice will determine the truth when a crime has been committed? Can you think of a better way for determining the guilt or innocence of a person? The jury did not always exist in the form that it does today nor did it follow the same procedure for arriving at the guilt or innocence of a person. This is how Winston Churchill in **The Birth of Britain** describes the evolution of the jury to the institution that we know today:

> "The modern jury which knows nothing about the case till it is proved in court was slow in coming. The process is obscure. A jury summoned to Westminster from distant parts might be reluctant to come. The way was long, the roads unsafe, and perhaps only three or four would arrive. The court could not wait. An adjournment would be costly. To avoid delay and expense the parties might agree to rely on a jury de circumstantibus, a jury of bystanders. The few jurors who knew the truth of the matter would tell their tale to the bystanders, and then the whole body would deliver their verdict. In time the jurors with local knowledge would cease to be jurors at all and become witnesses, giving their evidence in open court to a jury composed entirely of bystanders. Such, we may guess, or something like it, was what happened."

00065

APPENDIX A

FEDERAL AUTHORITY

OVER CRIMINAL PROCEDURE

UNITED STATES CONSTITUTION

Amendment I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment IV: The right of the people to be secure in their persons, houses, papers, and effects, **against unreasonable searches and seizures**, shall not be violated, and no Warrants shall issue, but upon **probable cause**, supported by Oath or **affirmation**, and particularly **describing** the **place** to be **searched**, and the **persons** or **things** to **be seized**.

Amendment V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or **indictment** of a **Grand Jury**, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be **twice put in jeopardy** of life or limb; nor shall be compelled in any criminal case to be a **witness against himself**, or be deprived of life, liberty, or property, **without due process of law**; nor shall private property be taken for public use, without just compensation.

Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; **and to be confronted with the witnesses against him**; to have compulsory process for obtaining witnesses in his favor, and to have the **Assistance of Counsel for his defense.**

Amendment VII: In Suits at common law, where the value in controversy shall exceed twenty dollars, **the right of trial by jury** shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII: **Excessive bail** shall not be required, nor excessive fines imposed, **nor cruel and unusual punishments** inflicted.

Amendment XIV: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX B

SELECTED BIBLIOGRAPHY

CORRECTIONS:

Allen, Harry E. and Simonsen, Clifford E., *Corrections in America: An Introduction*, Beverly Hills, Cal: Glencoe Press, 1975.

Becarria, Cesare, *On Crimes and Punishments*, Indianapolis, Bobbs-Merrill, 1963.

Bedau, Hugo Adam, *The Death Penalty in America*, New York: Doubleday, 1964.

Bennet, James V., *I Chose Prison*, N.Y.: Alfred A. Knopf, Inc., 1970.

Brockway, Zebulon R., *Fifty Years of Prison Service*, New York: Charities Publication, 1912.

Carney, Louis, *Introduction to Correctional Science*, N.Y.: McGraw-Hill, 1974.

Carter, Robert M. and Wilkins, *Probation and Parole: Selected Readings*, N.Y.: John Wiley and Sons, 1970.

Clegg, Reed K., *Probation and Parole: Principles and Practices*, Springfield, Ill.: Charles C. Thomas, 1964.

DeBeaumont, Gustave and DeTocqueville, Alexis, *On The Penitentiary System in the United States and its application in France*, Carbondale, Ill.: Southern Illinois U. Press, 1964.

Dressler, David, *Practice and Theory of Probation and Parole*, N.Y.: Columbia University Press, 1969.

Fox, Vernon, *Introduction to Corrections*, Englewood Cliffs, N.J.: Prentice-Hall, 1972.

Gibbons, D. C., *Changing the Lawbreaker*, Englewood Cliffs, N.J.: Prentice-Hall, 1965.

Goldfarb, R. L. and Singer, L., *After Conviction: A Review of the American Correctional System*, N.Y.: Simon & Schuster, 1972.

Hartinger, Walter Eldefonso, E. and Coffey, A., *Corrections: A Component of the Criminal Justice System*, Pacific Palisades, Cal., Goodyear Publ., 1973.

Keve, Paul W., *The Probation Officer Investigates*, St. Paul, Minn., University of Minnesota Press, 1960.

Lander, Walter, A., *The Prison Warden and the Custodial Staff*, Springfield, Ill: Charles C. Thomas, Inc., 1965.

Menninger, Karl, *The Crime of Punishment*, New York: Viking Press, 1966.

Minton, R. J. (ed.), *Inside: Prison American Style*, N.Y.: Random House, 1971.

Nagel, Wm., *The New Red Barn: A Critical Look at the Modern American Prison*, New York: Walker and Co., 1973.

National Advisory Commission on Criminal Justice Standards and Goals, **Corrections**, Washington, D. C.: U.S. Government Printing Office, 1973.

Nagel, Wm., *The Human Cage: A Brief History of Prison Architecture*, N.Y., Walker and Co., 1973.

Petersen, D. and M. Truzzi, *Criminal Life: Views from the Inside*, Englewood Cliffs, N.J., Prentice-Hall, 1972.

President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: Corrections*, Wash., D.C., U.S. Government Printing Office, 1967.

00067

Raush, Harold L., *The Half-way House Movement: A Search for Sanity*, N.Y.: Appleton-Century-Croft, 1968.

Rothman, David J., *The Discovery of the Asylum: Social Order and Disorders in the New Republic*, Boston: Little, Brown & Co., 1971.

COURTS:

American Bar Association, *Law and Courts in the News - A Layman's Handbook*. Chicago: American Bar Association.

Blaustein, Albert P., *The American Lawyer*, Chicago: University of Chicago Press, 1954.

Dawson, Robert O., *Sentencing: The Decision as to Type, Length and Conditions of Sentence*., Boston: Little, Brown and Co., 1969.

Douglas, William O., *We the Judges*, Garden City, N.Y.: Doubleday, Inc., 1956.

Downie, L., *Justice Denied - The Case for Reform of the Courts*, Baltimore, Md., Penguin Books, 1971.

Frank, Jerome, *Courts on Trial*, Princeton, N.J.: Princeton U. Press, 1949.

Frankel, Marvin, *Criminal Sentences*, New York: Hill and Wang, 1972.

Goldfarb, R., *Ransom: A Critique of the American Bail System*, New York: Harper and Row, 1965.

James, H., *Crisis in the Courts*, New York: David McKay, Inc., 1968.

Kalven, H. and Zeisel, H., *The American Jury*, University of Chicago Press, 1971.

Laurent, Francis W., *The Business of a Trial Court: 100 Years of Cases*, Madison, Wisc.: University of Wisconsin Press, 1959.

Lewis, Anthony, *Gideon's Trumpet*, N.Y.: Vintage Press, 1964.

National Advisory Commission on Criminal Justice Standards and Goals, *Courts*, Wash., D.C.: U. S. Government Printing Office, 1967.

Newman, Donald J., *Conviction: The Determination of Guilt or Innocence Without Trial*, Boston: Little, Brown and Co., 1966.

President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts*, Wash., D.C.: U. S. Government Printing Office, 1967.

Radzinowicz, L. and Wolfgang, M.E., *Crime and Justice*, Vol. 2: *The Criminal in the Arms of the Law*, New York: Basic Books, 1971.

Wood, Arthur L., *The Criminal Lawyer*, New Haven, Conn.: College and University Press, 1967.

_____, *For a More Perfect Union - Court Reform*, Washington, D.C., U.S. Government Printing Office, 1971.

GENERAL:

Gagnon, J. and W. Simon, *Sexual Deviance*, New York: Harper and Row, 1967.

Malinowski, B., *Crime and Custom in a Savage Society*, Paterson, N.J.: Littlefirld, Adams & Co., 1964.

Prassel, F.R., *Introduction to American Criminal Justice*, New York: Harper and Row, 1975.

Savitz, L., *Dilemmas in Criminology*, N.Y.: McGraw-Hill, 1967.

Schur, E. *Our Criminal Society*, Englewood Cliffs, N.J.: Prentice-Hall, 1969.

Sutherland, E.H. & Cressey, D.R., *Criminology*, Phila.: Lippincott, 1969.

JUVENILE DELINQUENCY AND JUVENILE JUSTICE:

Bassiouni, M.C., *Youth and the Law*, Boston, Mass: Houghton-Mifflin, Company 1970.

Cavan, Ruth Shonle, *Juvenile Delinquency* (2nd ed.), Phila.: Lippincott, 1969.

Coffey, Alan R., *Juvenile Corrections: Treatment and Rehabilitation*, Englewood Cliffs, N.J.: Prentice-Hall, 1975.

Cohen, Albert K., *Delinquent Boys: The Culture of the Gang*, New York: Free Press, 1955.

Eldefonso, E., *Youth Problems and Law Enforcement*, Englewood Cliffs, N.J.: Prentice-Hall, 1972.

Emerson, R.M., *Judging Delinquents: Context and Process in Juvenile Court*, Chicago, Adine Publishing Co., 1969.

Empey, L.T. and Erickson, M.L., *The Provo Experiment: Evaluating Community Control of Delinquency*, Cambridge, Mass: Heath-Lexington Books, 1972.

Garabedien, Peter G. and Gibbons, D.C., *Becoming Delinquent: Young Offenders and the Correctional Process*, Chicago: Aldine Publishing Co., 1970.

Glueck, Sheldon and Glueck, Eleanor, *Unraveling Juvenile Delinquency*, Cambridge, Mass: Harvard Univ. Press, 1950.

Haskell, Martin R. and Yablonsky, Lewis, *Juvenile Delinquency*, Chicago: Rand-McNally, 1974.

Hughers, H.M., *Delinquents and Criminals: Their Social World*, Boston, Mass: Holbrook Press, 1970.

Kobetz, R. W. and Bosarge, B.B., *Juvenile Justice Administration*, Gaithersburg, Md.: International Association of Chiefs of Police, 1968.

Korn, R. R., *Juvenile Delinquency*, New York: Thomas Y. Crowell Co., 1968.

O'Connor, George W. and Watson, Nelson A., *Juvenile Delinquency and Youth Crime*, Washington, D.C.: International Association of Chiefs of Police, 1964.

Platt, Anthony M., *The Child Savers: The Invention of Delinquency*, Chicago: University of Chicago Press, 1969.

President's Commission on Law Enforcement And Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime*, Washington, D.C., U.S. Government Printing Office, 1967.

Redl, Fritz and Wineman, David, *Children Who Hate*, New York: Free Press, 1951.

Schur, E., *Radical Non-Intervention: Rethinking the Delinquency Problem*, Englewood Cliffs, N.J.: Prentice-Hall, 1973.

Short, J. (ed.), *Gang Delinquency and Delinquent Subcultures*, New York: Harper and Row, 1967.

Vaz, E., *Middle-Class Juvenile Delinquency*, New York: Harper & Row, 1967.

Vedder, Clyde B. and Somerville, C.B., *Delinquent Girl*, Springfield, Ill.: Charles C. Tomas, 1970.

POLICE:

Adams, Thomas F., *Law Enforcement: An Introduction to the Police Role In the Criminal Justice System*, (2nd ed.) Englewood Cliffs, N.J.: Prentice-Hall, 1973.

00069

Ahern, James F., *Police in Trouble: Our Frightening Crisis in Law Enforcement*, New York: Hawthorne Books, 1972.

Alex, Nicholas, *Black and Blue: A Study of the Negro Policeman*, New York: Appleton- Century-Crofts, Inc., 1969.

Astor, Gerald, *The New York Cops*, New York: Scribner's, 1971.

Banton, Michael, *The Policeman in the Community*, New York: Basic Books, 1964.

Berkley, George E., *The Democratic Policeman*, Boston, Beacon Press, 1969.

Bittner, Egon, *The Functions of Police in Modern Society*, Chevy Chase, Md.: National Institute of Mental Health, 1970.

Bopp, William J., *The Police Rebellion*, Springfield, Ill., Charles C. Thomas, 1971.

Bordua, David J., *The Police: Six Sociological Essays*, N. Y.: John Wiley and Sons, 1967.

Brandstatter, A.F. and Hyman, Allen A., *Fundamentals of Law Enforcement*, New York: John Wiley and Sons, 1968.

Chevigny, Paul, *Police Power: Police Abuses in New York City*, New York: Vintage Books, 1969.

Edlefonso, Edward, Alan Coffey, and Richard C. Grace, *Principles of Law Enforcement*, New York: John Wiley and Sons, 1968.

Germann, A.C., Frank D. Day and Robert C. Gallati, *Introduction to Law Enforcement*, Springfield, Ill: Charles C. Thomas, 1969.

Kobetz, Richard W., *The Police Role and Juvenile Delinquency*, Gaithersburg, Md.: International Association of Chiefs of Police, 1971.

National Advisory Commission on Criminal Justice Standards and Goals, *Police*, Washington: U.S. Government Printing Office, 1973.

Neiderhoffer, Arthur, *Behind the Shield: The Police in Urban Society*, New York: Anchor Books, 1967.

President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: The Police*, Washington, D. C.: U.S. Government Printing Office, 1967.

Radelet, Louis A., *The Police and the Community*, Beverly Hills, Cal.: Glencoe Press, 1973.

Reiss, Albert J., Jr., *The Police and the Public*, New Haven, Conn.: Yale Univ. Press, 1971.

Schreiber, Flora Rheta, *A Job with a Future in Law Enforcement and Related Fields*, New York: Grosset & Dunlap, 1970.

Skolnick, Jerome, *Justice Without Trial: Law Enforcement in a Democratic Society*, N.Y.: John Wiley and Sons, 1966.

Smith, Bruce, *Police Systems in the United States*, (2nd ed.) New York: Harper and Row, 1960.

00070

APPENDIX C

GLOSSARY OF TERMS

Adjudication - The judgment of the court concerning innocence or guilt.

Arraignment - To bring a defendant to the court to charge him formally with a criminal violation.

Assize - Historically a group of men from a community selected to tell the English king of crimes occurring in their area.

Attorney - A person usually having a law degree, who is employed in preparing , managing, and trying cases in the courts.

Auburn Plan - A prison philosophy which allowed inmates to work together in "congregate workshops" during the day, and kept them in isolation cells at night.

Bail Bondsman - A person who, for a fee, will put up enough money to enable a person to get out of jail on bail.

Bail - Money or other valuables which are used to procure the release of a person under arrest pending his trial.

Bill of Information - A document that goes from the prosecutor's office to a judge which gives evidence that a person has committed a criminal offense. This is a technique that can be used instead of going to the Grand Jury.

Blood-feud - A conflict between two parties in which blood shed by one party demands that an equal amount of blood be shed by the other party. (viz, the feud between the Hatfields and the McCoys.)

Booking - The process whereby information about a person is obtained prior to placing him in jail. This is the first administrative record made of an arrest.

Burglary - Generally, breaking and entering a building with the intent to commit a felony offense.

Capital Offense - Any offense which carries the death penalty.

Citizen's Arrest - The process whereby a citizen can apprehend and detain any person who has committed a crime. The citizen is limited, however, in the conditions under which he may exercise this power.

Comes Stabuli - Early English name for constable, a person hired to aid the shire-reeve (sheriff).

Compurgation - In English history, a meeting of members of a community to listen to an accused person's friends. If the community believed his friends, then the accused was believed to be innocent.

County Court - Historically, a group of people who are elected with the responsibility of managing the county. In America the county court may or may not have the authority to rule on criminal matters.

Crime - Any act which is prohibited by the criminal statutes.

Crime Control Model - A view which argues that the best way to control crime is to do everything possible to catch and imprison criminals, even if it means violating their constitutional rights.

00071

Criminal - Anyone who has been convicted of a criminal offense.

Cross-examination - Cross-examination is the process where an attorney, in court, will question the witness of the other attorney.

Decriminalization - The removal of criminal penalties for acts previously defined as being criminal.

Defendant - The person who has been charged with a criminal act.

Definite Sentence - Any sentence which is for an exact period of time (for example five years).

Deliberation - That part of the trial in which the jury decides the verdict.

Delinquent - A juvenile who has been found guilty of a criminal offense. In some states it may also include any juvenile who has committed a "status" offense.

Deterrence - One of the purposes of punishments which seeks to prevent crime by creating fear of sanction.

Discretion - The freedom to make decisions, the freedom to choose between two alternative courses of action.

Disparity - Inequality, the treating of two equals in different and unequal ways.

Due Process Model - A view which argues that the best way to control crime is to protect all of the constitutional rights of the individual so that the individual can come to respect the law and the legal system.

Exorcism - The process of casting out devils.

Felony - Generally, a serious criminal offense which carries a possible sentence of more than one year.

Grand Jury - A group of usually eighteen or more people who determine if evidence is sufficient to believe that there is "probable cause" to believe that the accused committed a crime.

Halfway House - An institution set up as a "bridge" between the prison and the community, which allows inmates a great deal of freedom in order to prepare them for life in society.

Indefinite Sentence - A sentence which has a maximum and a minimum range, but no exact length of incarceration. For example, a sentence of 1 - 10 years.

Indeterminate Sentence - A sentence which has no length stipulation at all. For example, a sentence of one day to life.

Indictment - An accusation in writing presented to the Grand Jury, charging that a person has violated the law.

Inquisito - An investigation, in French history, to settle disputes that existed among the royal lords.

Jail - An institution to hold those individuals awaiting trial, and to hold those individuals serving sentences of one year or less.

Juratas - An investigation, in French history, to settle disputes relating to the public order. From the "juratas" we get the English term "jury".

Jurisdiction - A geographical area in which a law enforcement agency or court has authority to exercise power.

Law - A set of rules relating to external conduct, enforced by external force laid down by the state, and applied to every citizen equally.

00072

Magistrate - A judicial official with the authority to hear minor offenses. The term Justice of the Peace is often equivalent term.

Misdemeanor - Generally, any criminal offense which carries a possible sentence of one year or less.

Overcriminalization - The belief that many people are being labeled criminal because of too many laws. For example, many people believe that public drunkenness should not be a criminal offense.

Parole - Release from prison under the supervision of an officer of the state, under conditions, subject to revocation.

Pennsylvania Plan - A prison philosophy which believed that the best way to rehabilitate criminals was to imprison them and subject them to total isolation from all other criminals.

Plea Bargaining - The agreement to plead guilty to a criminal offense in return for a reduced sentence or other "considerations".

Preliminary Hearing - That stage of the criminal justice process where the prosecuting attorney presents enough evidence to the judge to convince him that the accused is probably guilty of a crime.

Principle of the Ordeal - The belief that if a person accused of a crime can perform a dangerous act without harm then he must be innocent of the charge because God would not allow an innocent person to be harmed.

Prison - An institution created to house criminals who have been convicted of serious offenses (felonies).

Prisonization - The process whereby the inmate begins to learn the way of life and norms of other inmates.

Probation - A sentence in which the judge allows the criminal to remain free, but under the supervision of the state.

Prosecutor - The attorney for the state who presents the evidence against the defendant in court.

Rehabilitation - To restore the process whereby undesirable behavior patterns are changed into desirable ones.

Release on Recognizance - A practice in which a person with a good background can be released from jail, pending trial, without bail.

Sentence - The punishment that is handed down by the judge.

Shire - A geographical area in England, similar to our "county".

Shire-reeve - The chief law enforcement officer in each English "shire". This is the forerunner of "sheriff".

Status Offense - Those acts which are defined as illegal for juveniles but not for adults. For example, drinking alcoholic beverages.

Tithing System - In English history, a system of self protection where groups of ten families would join together and the head of each family was responsible for the behavior of all the members of his family.

Trial - That part of the criminal justice system in which the innocence or guilt of the defendant is determined.

Vicemones - In English history, a traveling judge.

00073

APPENDIX D

Magna Charta

More than seven hundred years have passed since that dramatic moment in 1215 when a group of bold English barons, determined at any cost to limit the power of King John, forced him to sign the Magna Charta. This ancient document, brittle and yellow with age, has been preserved as a priceless treasure, cherished not only in England, not only in the Western World, but by all men everywhere who believe that only under law can men be truly free.

In the Great Charter, the king agreed to certain limitations on his powers. Although the document did not protect the common people, it did represent a milestone in the history of human rights, for it served as a precedent for the growth of constitutional government. Evidence of how greatly American thinking was influenced by this document can be found in an examination of its provisions for due process of law, freedom of movement, and taxation only with the consent of the legislature.

June 15, 1215

John, by the grace of God, King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Earl of Anjou: to his archbishops, bishops, abbots, earls, barons, justiciaries (royal judiciary officers), foresters, sheriffs, governors, officers, and to all bailiffs (sheriff's deputies), and his faithful subjects -- Greeting.

Know ye, that we, in the presence of God, . . . have confirmed (given assurance), for us and our heirs forever:

1. That the English Church shall be free, and shall have her whole rights and her liberties inviolable (safe from sudden change); . . .

We have also granted to all the freemen of our kingdom, for us and our heirs forever, all the underwritten liberties, to be enjoyed and held by them and by their heirs, from us and from our heirs . . . .

12. No scutage (tax for military purposes) not aid shall be imposed in our kingdom, unless by the common council of our kingdom; excepting to redeem (ransom) our person, to make our eldest son a knight, and once to marry our eldest daughter, and not for these unless a reasonable aid shall be demanded. . . .

14. And also to have the common council of the kingdom, we will cause to be summoned the archbishops, bishops, abbots, earls, and great barons, individually by our letters. . . .

38. No bailiff, for the future, shall put any man to his law upon his own simple affirmation, without credible witnesses produced for that purpose.

39. No freeman shall be seized, imprisoned, dispossessed (deprived of his land), out lawed, or exiled, or in any way destroyed; nor will we proceed against or prosecute him except by the lawful judgment of his peers (equals), or by the law of the land.

40. To none will we sell; to none will we deny, to none will we delay right or justice.

41. All merchants shall have safety and security in coming into England, and going out of England and in staying in and traveling through England, as well by land as by water to buy and sell, without any unjust exactions (demands), according to ancient and right customs, excepting in the time of war, and if they be of a country at war against us; and if such are found in our land at the beginning of a way, they shall be apprehended (arrested) without injury to their bodies and goods until it be known to us or to our Chief Justiciary how the merchants of our country are treated who are found in the country at war against us; and if ours be in safety there, the others shall be in safety in our land.

42. It shall be lawful to any person, for the future, to go out of our kingdom, and to return, safely and securely by land or by water, saving (preserving) his allegiance to us, unless it be in time of war, for some short space, for the common good of the kingdom: . . .

60. Also all these customs and liberties aforesaid, which we have granted to be held in our kingdom, for so much of it as belongs to us, all our subjects, as well clergy as laity (nonclergy, or laymen), shall observe toward their tenants as far as concerns them...

63. Wherefore our will is, and we firmly command that the Church of England be free, and that the men in our kingdom have and hold the aforesaid liberties, rights, and concessions, well and in peace, freely and quietly, fully and entirely, to them and their heirs, of us and our heirs, in all things and places forever, as is aforesaid. It is also sworn, both on our part and on that of the barons, that all the aforesaid shall be observed in good faith and without any evil intention....

Given by our hand in the meadow which is called Runnymede, between Windsor and Staines, this 15th day of June, in the 17th year of our reign.

00075